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**STATE OF NORTH CAROLINA**

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**SESSION LAWS AND RESOLUTIONS**

**PASSED BY THE**

**1995 GENERAL ASSEMBLY**

**AT ITS**

**REGULAR SESSION 1995**

**BEGINNING ON**

**WEDNESDAY, THE TWENTY-FIFTH DAY OF**

**JANUARY, A.D. 1995**

**HELD IN THE CITY OF RALEIGH**

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**ISSUED BY**

**SECRETARY OF STATE RUFUS L. EDMISTEN**

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H.B. 759

## CHAPTER 472

AN ACT TO PROVIDE THAT A HOME FOR THE AGED, SICK, OR INFIRM WHOSE PROPERTY IS EXEMPT FROM PROPERTY TAX IS ALLOWED A REFUND OF STATE AND LOCAL SALES AND USE TAXES.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 105-164.14(b), as amended by Chapter 17 of the 1995 Session Laws, reads as rewritten:

"(b) ~~Nonprofit Corporations, Entities and Hospital Drugs. -- The Secretary shall make refunds semiannually to hospitals not operated for profit (including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 2 of Chapter 131E of the General Statutes), educational institutions not operated for profit, and churches, orphanages, and other charitable or religious institutions and organizations not operated for profit~~ A nonprofit entity included in the following list is allowed a semiannual refund of sales and use taxes paid by it under this Article, except under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), ~~by these institutions and organizations on direct purchases of tangible personal property for use in carrying on the work of the institutions or organizations,~~ nonprofit entity:

- (1) Hospitals not operated for profit, including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 2 of Chapter 131E of the General Statutes.
- (2) Educational institutions not operated for profit.
- (3) Churches, orphanages, and other charitable or religious institutions and organizations not operated for profit.
- (4) Homes for the aged, sick, or infirm whose property is excluded from property tax under G.S. 105-275(32).

~~Sales and use tax liability indirectly incurred by one of these institutions or organizations~~ a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the ~~institution or organization~~ nonprofit entity and is being erected, altered, or repaired for use by the ~~institution or organization~~ nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the ~~institution or organization.~~ The Secretary shall also make refunds semiannually to all other hospitals not excluded by this subsection nonprofit entity.

A hospital that is not allowed a refund under this subsection of sales and use taxes paid on its direct purchases of tangible personal property is allowed a semiannual refund of sales and use tax taxes paid by them it on medicines and drugs purchased for use in carrying out their work. This

The refunds allowed under this subsection does for certain nonprofit entities and for medicines and drugs purchased by hospitals do not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital

facilities created under Article 2 of Chapter 131E of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c). A

A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15."

**Sec. 2.** This act is effective upon ratification and applies to purchases made on or after January 1, 1995.

In the General Assembly read three times and ratified this the 25th day of July, 1995.

H.B. 120

## CHAPTER 473

## AN ACT TO REVISE THE WINDOW TINTING LAWS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 20-127, as amended by Chapter 683 of the 1993 Session Laws (Reg. Sess. 1994), reads as rewritten:

"§ 20-127. ~~Windshields must be unobstructed.~~ Windows and windshield wipers.

~~(a) It shall be unlawful for any person to drive any vehicle upon a highway with any sign, poster or other nontransparent material upon the front windshield, side wings, side or rear window of such motor vehicle other than a certificate or other paper required to be so displayed by law, or approved by the Commissioner of Motor Vehicles.~~

~~(b) No motor vehicle which is equipped with a permanent windshield shall be operated upon the highways unless said windshield is equipped with a device for cleaning snow, rain, moisture, or other matters from the windshield directly in front of the operator, which device shall be in good working order and so constructed as to be controlled or operated by the operator of the vehicle. Provided, on any vehicle equipped by its manufacturer with such devices on both the right and left sides of windshield, both such devices shall be in working order. The device required by this subsection shall be of a type approved by the Commissioner.~~

~~(c) It is unlawful to operate on a highway a motor vehicle that is registered or required to be registered in this State if it has a sunscreen device or tinted film on its windshield, its front side wings, its front side windows adjacent to the right and left of the driver, or its windows to the rear of the driver that was installed after factory delivery and does not meet the requirements of this section.~~

~~(d) A sunscreen device or tinted film must be a nonreflective type and may not be red, yellow, or amber in color. A sunscreen device or tinted film may be used only along the top of a windshield and may not extend downward beyond the ASI line or more than five inches, whichever is closer to the top of the windshield. A sunscreen device or tinted film may not be~~



~~applied to a window other than the windshield if it reduces the total light transmission of the window to less than thirty-five percent (35%) or it has a reflectance of light exceeding twenty percent (20%).~~

~~(e) A vehicle that has a window with an after-factory installed sunscreen device or tinting film must display the installer's sticker.~~

~~(f) A person may not apply a sunscreen device or tinting film to a window that does not meet the requirements of this section. A person who applies a sunscreen device or tinting film to a window must place a sticker between the film and the glass in the lower back corner of each glass that is visible from the outside of the vehicle. The sticker must be no larger than one inch by two inches and must identify the installer by name and street address.~~

~~(g) The Commissioner shall certify window tinting inspectors. To obtain a certification as a window tinting inspector, a person must meet the qualifications set by the Commissioner and have the testing equipment required by the Commissioner. Certification as a window tinting inspector is valid for four years. The Commissioner may revoke a certification for violations of this section.~~

~~(h) Testimony that a window of a vehicle failed to meet the light transmittance or reflectance requirements of this section using equipment, methods, or procedures approved by the Commissioner is prima facie evidence of a violation of this section. It is a defense to a window tinting violation under this section if the driver charged produces a certification issued by a certified window tinting inspector showing that the sunscreen device or tinting film meets the requirements of this section. It is a further defense to show that any sign, poster, or other nontransparent material, sunscreen device, or tinting film has been removed or modified so that the vehicle is in compliance with this section.~~

~~(i) This section does not apply to windows behind the driver of excursion passenger vehicles as defined in G.S. 20-4.01(27)a., for-hire passenger vehicles as defined in G.S. 20-4.01(27)b., common carriers of passengers as defined in G.S. 20-4.01(27)c., ambulances as defined in G.S. 20-4.01(27)f., property hauling vehicles as defined in G.S. 20-4.01(31), limousines, motor homes, law enforcement K-9 vehicles, or vehicles that are registered in another state and are in compliance with the standards required in that state.~~

~~(j) A person who registers a vehicle in this State that has had an after-factory sunscreen device or window tinting installed outside the State that does not display a sticker equivalent to the one required by subsection (e) of this section must have the device or window tinting inspected by a certified window tinting inspector. If the sunscreen device or window tinting meets the requirements of this section, the inspector must place a unique sticker on the inside of each window to which the sunscreen device or window tinting is applied. The sticker must be placed on the lower back corner of each glass that is visible from the outside of the vehicle. The sticker must be no larger than one inch by two inches and must identify the person affixing the sticker by name and street address. The Commissioner shall issue stickers for placement under this section. The Commissioner may charge a fee, not to exceed two dollars (\$2.00), for a sticker to recoup~~

~~the cost of producing the unique sticker authorized by this subsection. The fee charged by a person who inspects a window under this subsection may not exceed ten dollars (\$10.00).~~

~~(k) A violation of subsection (c) or (j) of this section shall be a misdemeanor punishable as provided in G.S. 20-176(c). A violation of any other subsection of this section is an infraction.~~

(a) Windshield Wipers. -- A vehicle that is operated on a highway and has a windshield must have a windshield wiper to clear rain or other substances from the windshield in front of the driver of the vehicle and the windshield wiper must be in good working order. If a vehicle has more than one windshield wiper to clear substances from the windshield, all the windshield wipers must be in good working order.

(b) Window Tinting Restrictions. -- A window of a vehicle that is operated on a highway or a public vehicular area must comply with this subsection. The windshield of the vehicle may be tinted only along the top of the windshield and the tinting may not extend more than five inches below the top of the windshield or below the AS1 line of the windshield, whichever measurement is longer. Any other window of the vehicle may be tinted in accordance with the following restrictions:

- (1) The total light transmission of the tinted window must be at least thirty-five percent (35%). A vehicle window that, by use of a light meter approved by the Commissioner, measures a total light transmission of more than thirty-two percent (32%) is conclusively presumed to meet this restriction.
- (2) The light reflectance of the tinted window must be twenty percent (20%) or less.
- (3) Tinted film or another material used to tint the window must be nonreflective and must be a color other than red, yellow, or amber.

(c) Tinting Exceptions. -- The window tinting restrictions in subsection (b) of this section apply without exception to the windshield of a vehicle. The window tinting restrictions in subdivisions (b)(1) and (b)(2) of this section do not apply to any of the following vehicle windows:

- (1) A window of an excursion passenger vehicle, as defined in G.S. 20-4.01(27)a.
- (2) A window of a for-hire passenger vehicle, as defined in G.S. 20-4.01(27)b.
- (3) A window of a common carrier of passengers, as defined in G.S. 20-4.01(27)c.
- (4) A window of a motor home, as defined in G.S. 20-4.01(27)d2.
- (5) A window of an ambulance, as defined in G.S. 20-4.01(27)f.
- (6) The rear window of a property-hauling vehicle, as defined in G.S. 20-4.01(31).
- (7) A window of a limousine.
- (8) A window of a law enforcement vehicle.
- (9) A window of a multipurpose vehicle that is behind the driver of the vehicle. A multipurpose vehicle is a passenger vehicle that is designed to carry 10 or fewer passengers and either is constructed on a truck chassis or has special features designed for

occasional off-road operation. A minivan and a pickup truck are multipurpose vehicles.

- (10) A window of a vehicle that is registered in another state and meets the requirements of the state in which it is registered.

(c) Violations. -- A person who does any of the following commits a misdemeanor of the class set in G.S. 20-176:

- (1) Applies tinting to the window of a vehicle that is subject to a safety inspection in this State and the resulting tinted window does not meet the window tinting restrictions set in this section.
- (2) Drives on a highway or a public vehicular area a vehicle that has a window that does not meet the window tinting restrictions set in this section.

(d) Defense. -- It is a defense to a charge of driving a vehicle with an unlawfully tinted window that the tinting was removed within 15 days after the charge and the window now meets the window tinting restrictions. To assert this defense, the person charged must produce in court, or submit to the prosecuting attorney before trial, a certificate from the Division of Motor Vehicles or the Highway Patrol showing that the window complies with the restrictions."

Sec. 2. G.S. 20-183.3(a) reads as rewritten:

"(a) Safety. -- A safety inspection of a motor vehicle consists of an inspection of the following equipment to determine if the vehicle has the equipment required by Part 9 of Article 3 of this Chapter and if the equipment is in a safe operating condition:

- (1) Brakes, as required by G.S. 20-124.
- (2) Lights, as required by G.S. 20-129 or G.S. 20-129.1.
- (3) Horn, as required by G.S. 20-125(a).
- (4) Steering mechanism, as required by G.S. 20-123.1.
- (5) Windows and windshield wipers, as required by G.S. 20-127. To determine if a vehicle window meets the window tinting restrictions, a safety inspection mechanic must first determine, based on use of an automotive film check card or knowledge of window tinting techniques, if after-factory tint has been applied to the window. If after-factory tint has been applied, the mechanic must use a light meter approved by the Commissioner to determine if the window meets the window tinting restrictions.
- (6) Directional signals, as required by G.S. 20-125.1.
- (7) Tires, as required by G.S. 20-122.1.
- (8) Mirrors, as required by G.S. 20-126.
- (9) Exhaust system, as required by G.S. 20-128. For a vehicle that is subject to an emissions inspection in addition to a safety inspection, a visual inspection of the vehicle's emission-control devices is included in the emissions inspection rather than the safety inspection."

Sec. 3. G.S. 20-183.7(a) reads as rewritten:

"(a) Fee Amount. -- The following fees apply to an inspection of a vehicle and the issuance of an inspection sticker:

Type

Inspection

Sticker

Safety <del>Only</del> Only, Without After-Factory Tinted Window	\$ 8.25	\$1.00
Safety Only, With After- Factory Tinted Window	18.25	1.00
Emissions and Safety Safety, Without After-Factory Tinted Window	17.00	2.40, 2.40
Emissions and Safety, With After-Factory Tinted Window	27.00	2.40.

The fee for performing an inspection of a vehicle applies when an inspection is performed, regardless of whether the vehicle passes the inspection. The fee for an inspection sticker applies when an inspection sticker is put on a vehicle. The fee for performing an inspection of a vehicle with a tinted window applies only to an inspection performed with a light meter after a safety inspection mechanic determined that the window had after-factory tint.

A vehicle that is inspected at an inspection station and fails the inspection is entitled to be reinspected at the same station at any time within 30 days of the failed inspection without paying another inspection fee."

**Sec. 4.** This act becomes effective November 1, 1995.

In the General Assembly read three times and ratified this the 25th day of July, 1995.

H.B. 223

## CHAPTER 474

### AN ACT TO REDUCE THE EXCISE TAX ON SOFT DRINKS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 105-113.45 reads as rewritten:

"§ 105-113.45. Excise taxes on soft drinks and base products.

(a) Bottled Soft Drinks. -- An excise tax of ~~one cent (1¢)~~ three-fourths cent (3/4¢) is levied on each bottled soft drink.

(b) Repealed by Session Laws 1991, c. 689, s. 276.

(c) Liquid Base Products. -- An excise tax at the rate of ~~one dollar (\$1.00) a gallon~~ seventy-five cents (75¢) is levied on each individual container of a liquid base product. The tax applies regardless whether the liquid base product is diverted to and used for a purpose other than making a soft drink.

(d) Dry Base Products. -- An excise tax is levied on each individual container of a dry base product at the rate:

(1) Of ~~one cent (1¢)~~ three-fourths cent (3/4¢) an ounce if the dry base product is not converted into a syrup or other liquid base product before it is used to make a soft drink.

(2) That would apply under subsection (c) to the resulting liquid base product if the dry base product is converted into a liquid base product before it is used to make a soft drink.

(e) Repealed by Session Laws 1991, c. 689, s. 276."

**Sec. 2.** G.S. 105-113.52(a) reads as rewritten:



"(a) Tax Reduction. -- The tax on the first 15,000 gross of bottled soft drinks sold at wholesale on or after October 1 of each year by a distributor or wholesale dealer who is liable for the tax and who files a timely report under G.S. 105-113.51 is ~~seventy-two cents (72¢) a gross rather than one-half the amount stated in G.S. 105-113.45.~~ The tax reduction does not apply to bottled soft drinks acquired by the distributor or wholesale dealer in a sale in which the distributor or wholesale dealer presented a soft drink certificate of liability, and it does not apply to sales made by a distributor or wholesale dealer who is not licensed as required by this Article. When reporting tax due on bottled soft drinks to which this reduced rate applies, a distributor or wholesale dealer shall pay the reduced amount."

Sec. 3. This act becomes effective July 1, 1996. The change made by Section 2 of this act to the tax reduction for certain sales of bottled soft drinks applies to sales made on or after July 1, 1996.

In the General Assembly read three times and ratified this the 25th day of July, 1995.

H.B. 280

## CHAPTER 475

## AN ACT TO PROHIBIT THE SALE OF CERTAIN PYROTECHNICS TO PERSONS UNDER THE AGE OF SIXTEEN.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 14-410 reads as rewritten:

"§ 14-410. *Manufacture, sale and use of pyrotechnics prohibited; public exhibitions permitted; common carriers not affected.*

(a) It shall be unlawful for any individual, firm, partnership or corporation to manufacture, purchase, sell, deal in, transport, possess, receive, advertise, use or cause to be discharged any pyrotechnics of any description whatsoever within the State of North Carolina: provided, however, that it shall be permissible for pyrotechnics to be exhibited, used or discharged at public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations: provided, further, that the use of said pyrotechnics in connection with public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations, shall be under supervision of experts who have previously secured written authority from the board of county commissioners of the county in which said pyrotechnics are to be exhibited, used or discharged: provided, further, that such written authority from the board of commissioners is not required for a public exhibition authorized by The University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel Hill; provided, further, that it shall not be unlawful for a common carrier to receive, transport, and deliver pyrotechnics in the regular course of its business.

(b) Notwithstanding the provisions of G.S. 14-414, it shall be unlawful for any individual, firm, partnership, or corporation to sell pyrotechnics as defined in G.S. 14-414 (2), (3), (4)c., (5), or (6) to persons under the age of 16."

**Sec. 2.** This act becomes effective December 1, 1995, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 25th day of July, 1995.

H.B. 281

## CHAPTER 476

## AN ACT TO CREATE THE RESIDENTIAL PROPERTY DISCLOSURE ACT.

*The General Assembly of North Carolina enacts:*

**Section 1.** Effective January 1, 1996, the General Statutes are amended by adding a new Chapter to read:

"Chapter 47E.

"ARTICLE 1.

"Residential Property Disclosure Act.

" § 47E-1-1. Applicability.

This Chapter applies to the following transfers of residential real property consisting of not less than one nor more than four dwelling units, whether or not the transaction is with the assistance of a licensed real estate broker or salesman:

- (1) Sale or exchange.
- (2) Installment land sales contract.
- (3) Option, or
- (4) Lease with option to purchase, except as provided in G.S. 47E-1-2(10).

" § 47E-1-2. Exemptions.

The following transfers are exempt from the provisions of this Chapter:

- (1) Transfers pursuant to court order, including transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.
- (2) Transfers to a beneficiary from the grantor or his successor in interest in a deed of trust, or to a mortgagee from the mortgagor or his successor in interest in a mortgage, if the indebtedness is in default; transfers by a trustee under a deed of trust or a mortgagee under a mortgage, if the indebtedness is in default; transfers by a trustee under a deed of trust or a mortgagee under a mortgage pursuant to a foreclosure sale, or transfers by a beneficiary under a deed of trust, who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust.
- (3) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.
- (4) Transfers from one or more co-owners solely to one or more other co-owners.
- (5) Transfers made solely to a spouse or a person or persons in the lineal line of consanguinity of one or more transferors.

- (6) Transfers between spouses resulting from a decree of divorce or a distribution pursuant to Chapter 50 of the General Statutes or comparable provision of another state.
- (7) Transfers made by virtue of the record owner's failure to pay any federal, State, or local taxes.
- (8) Transfers to or from the State or any political subdivision of the State.
- (9) Transfers involving the first sale of a dwelling never inhabited.
- (10) Lease with option to purchase contracts where the lessee occupies or intends to occupy the dwelling.
- (11) Transfers between parties when both parties agree not to complete a residential property disclosure statement.

" § 47E-1-3. Definitions.

When used in this Chapter, unless the context requires otherwise, the term:

- (1) 'Owner' means each person having a recorded present or future interest in real estate that is identified in a real estate contract subject to this Chapter; but shall not mean or include the trustee in a deed of trust, or the owner or holder of a mortgage, deed of trust, mechanic's or materialman's lien, or other lien or security interest in the real property, or the owner of any easement or license encumbering the real property.
- (2) 'Purchaser' means each person or entity named as 'buyer' or 'purchaser' in a real estate contract subject to this Chapter.
- (3) 'Real estate contract' means a contract for the transfer of ownership of real property by the means described in G.S. 47E-1-1.
- (4) 'Real property' means the lot or parcel, and the dwelling unit(s) thereon, described in a real estate contract subject to this Chapter.

" § 47E-1-4. Required disclosures.

(a) With regard to transfers described in G.S. 47E-1-1, the owner of the real property shall furnish to a purchaser a residential property disclosure statement. The disclosure statement shall contain the language and be in the form set forth in subsection (b) of this section. The statement shall:

- (1) Disclose those items which are required to be disclosed relative to the condition of the property and of which the owner has actual knowledge; or
  - (2) State that the owner makes no representations as to the condition of the real property or any improvements to the real property except as otherwise provided in the real estate contract.
- (b) A residential property disclosure statement shall read as follows:
- 'RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

Notice to Seller and Purchaser

The North Carolina Residential Property Disclosure Act requires the owner of residential real property consisting of 1-4 units, whenever the property is to be sold, exchanged, optioned, or purchased pursuant to a lease with option to purchase, to furnish to the purchaser a RESIDENTIAL

PROPERTY DISCLOSURE STATEMENT disclosing certain conditions of the property. Certain transfers of residential property are excluded from this requirement by G.S. 47E-1-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling.

Property Address/Description:

The undersigned owner(s) of the real property described above disclose the following present conditions of the real property of which the owner(s) has actual knowledge with regard to:

1. Any abnormality or malfunctioning of the water supply or sanitary sewage disposal system:

☐Yes ☐None Known ☐No Representations

If Yes, please describe

2. Any damage to or abnormality of the roof, chimneys, floors, foundation, basement, or load-bearing walls, or any leak in the roof or basement:

☐Yes ☐None Known ☐No Representations

If Yes, please describe

3. Any abnormality or malfunctioning of the plumbing, electrical, heating, or cooling systems:

☐Yes ☐None Known ☐No Representations

If Yes, please describe

4. Present infestation of wood-destroying insects or organisms or past infestation the damage for which has not been repaired:

☐Yes ☐None Known ☐No Representations

If Yes, please describe

5. The real property's violation of zoning laws, restrictive covenants or building codes; any encroachment of the real property from or to adjacent real property; or notice from any governmental agency affecting this real property:

☐Yes ☐None Known ☐No Representations

If Yes, please describe

6. Presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material (whether buried or covered):

☐Yes ☐None Known ☐No Representations

If Yes, please describe

The purchaser and owner may wish to obtain professional advice about, or inspections of, the real property. The owner has a duty to disclose any material inaccuracy in this statement or any material change in the real property which is discovered between the date of this statement and the closing of the transaction. The owner(s) acknowledge having examined this statement before signing below:

Owner

Date

Owner

Date



The purchaser(s) acknowledge receipt of a copy of this disclosure statement and further acknowledge that they have examined it before signing below:

<u>Purchaser</u>	<u>Date</u>	<u>Purchaser</u>	<u>Date</u>
------------------	-------------	------------------	-------------

(c) The rights of the parties to a real estate contract as to conditions of the property of which the owner had no actual knowledge are not affected by this Article unless the residential disclosure statement states that the owner makes no representations as to those conditions. If the statement states that an owner makes no representations as to the conditions of the property, then the owner has no duty to disclose those conditions, whether or not the owner should have known of them.

" § 47E-1-5. Time for disclosure; cancellation of contract.

(a) The owner of real property subject to this Chapter shall deliver to the purchaser the written disclosures required by this Chapter no later than the time such purchaser makes an offer to purchase, exchange, or option the property, or exercises the option to purchase the property pursuant to a lease with an option to purchase. The residential property disclosure statement may be included in the real estate contract, in an addendum, or in a separate document.

(b) If the disclosure statement required by this Chapter is delivered to such purchaser after the purchaser makes an offer, the purchaser may terminate any resulting real estate contract or withdraw the offer no later than three days after the purchaser receives the disclosure statement.

In order to terminate a real estate contract when permitted by this section, the purchaser shall, within the time required above, give written notice to the owner or the owner's agent either by hand delivery or by depositing into the United States mail, postage prepaid, and properly addressed to the owner or the owner's agent. If the purchaser terminates a real estate contract or withdraws an offer in compliance with this subsection, the termination or withdrawal of offer shall be without penalty to the purchaser, and any deposit shall be promptly returned to the purchaser. Any rights of the purchaser to terminate the contract provided by this subsection are waived conclusively if not exercised prior to the earlier of settlement or occupancy by the purchaser in the case of a sale or exchange, or prior to settlement in the case of a purchase pursuant to a lease with option to purchase. Any rights of the purchaser to terminate the contract for reasons other than those set forth in this subsection are not affected by this subsection.

" § 47E-1-6. Owner liability for disclosure of information provided by others.

If the owner chooses to provide a disclosure of property condition pursuant to G.S. 47E-1-4, the owner may discharge the duty to disclose by providing a written report attached to the residential property disclosure statement by a public agency or by an engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other expert, dealing with matters within the scope of the public agency's functions or the expert's license or expertise. The owner shall not be liable for any error, inaccuracy, or omission of any information delivered pursuant to this section if the error, inaccuracy, or omission was made in reasonable reliance upon

the information provided by the public agency or expert and the owner was not grossly negligent in obtaining the information or transmitting it.

" § 47E-1-7. *Change in circumstances.*

If, subsequent to the owner's delivery of a residential property disclosure statement to a purchaser, the owner discovers a material inaccuracy in the disclosure statement, or the disclosure statement is rendered inaccurate in a material way by the occurrence of some event or circumstance, the owner shall promptly correct the inaccuracy by delivering a corrected disclosure statement to the purchaser. Failure to deliver the corrected disclosure statement or to make the repairs made necessary by the event or circumstance shall result in such remedies for the buyer as are provided for by law in the event the sale agreement requires the property to be in substantially the same condition at closing as on the date of the offer to purchase, reasonable wear and tear excepted.

" § 47E-1-8. *Agent's duty.*

A real estate broker or salesman acting as the agent of the owner of residential real property has the duty to inform the owner of the owner's rights and obligations under this Chapter. Provided the owner's real estate broker or salesman has performed this duty, the broker or salesman shall not be responsible for the owner's willful refusal to provide a prospective purchaser with a residential property disclosure statement. Nothing in this Chapter shall be construed to conflict with, or alter, the broker or salesman's duties under Chapter 93A of the General Statutes.

" § 47E-1-9. *Rights and duties under Chapter 42, landlord and tenant, not affected during lease.*

This Chapter shall not affect the landlord-tenant relationship between the parties to a lease with option to purchase contract during the term of the lease, and the rights and duties of landlords and tenants under Chapter 42 of the General Statutes shall remain in effect until transfer of ownership of the property to the purchaser.

" § 47E-1-10. *Authorization to prepare forms; fees.*

The North Carolina Real Estate Commission may prepare, or cause to be prepared, forms for use pursuant to this Chapter. The Commission may charge a fee not to exceed twenty-five cents (25c) per form plus the costs of postage."

**Sec. 2.** This act is effective upon ratification and applies to real estate contracts entered into on or after January 1, 1996.

In the General Assembly read three times and ratified this the 25th day of July, 1995.

H.B. 55

## CHAPTER 477

AN ACT TO PROVIDE THAT SALES TAX PREFERENCES FOR AGRICULTURE APPLY TO AQUACULTURE.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 105-164.4(a)(1d) reads as rewritten:

"(1d) The rate of one percent (1%) applies to the sales price of the following articles. The maximum tax is eighty dollars (\$80.00) per article.

- a. Sales to a farmer of machines and machinery, ~~whether animal or motor drawn or operated~~, and parts and accessories for ~~such these machines and machinery to farmers machinery~~, for use by ~~them the farmer~~ in the planting, cultivating, ~~harvesting~~ harvesting, or curing of farm crops, ~~and sales of machines and machinery and parts and accessories for such machines and machinery to dairy operators, poultry farmers, egg producers, and livestock farmers for use by them in crops or in the production of dairy products, poultry, eggs or livestock, except such machines, machinery, equipment, parts, and accessories that come within the provisions of G.S. 105-164.13(4c), eggs, or animals. A 'farmer' includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. Items that are exempt from tax under G.S. 105-164.13(4c) are not subject to tax under this section.~~

The term 'machines and machinery' as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand, and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use defined in this subdivision, which have moving parts, or which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include nonvehicular implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to handfired furnaces or used in connection with mechanical burners.

- b. Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors who have contracts with manufacturing industries and plants. As used in this paragraph, the term

'manufacturing industries and plants' does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

- c. Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.
- d. Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.
- e. Sales to freezer locker plants of machinery used in the direct operation of said freezer locker plant and of parts and accessories thereto.
- f. Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.
- g. Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.
- h. Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.
- i. Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail."

Sec. 2. G.S. 105-164.13(2) reads as rewritten:

"(2) ~~Seeds; remedies. Seeds.~~

(2a) Any of the following when purchased for use in the commercial production of animals or plants, as appropriate:

- a. Remedies, vaccines, medications, litter materials, and feeds for livestock and poultry; rodenticides, animals.
- b. Rodenticides, insecticides, herbicides, fungicides, and pesticides for livestock, poultry, and agriculture; defoliant pesticides.
- c. Defoliant for use on cotton or other crops; plant crops.
- d. Plant growth inhibitors, regulators, or stimulators for agriculture stimulators, including systemic and contact or other sucker control agents for tobacco and other crops."

Sec. 3. G.S. 105-164.13(4c) reads as rewritten:

"(4c) ~~Commercially~~ Any of the following:



- a. Commercially manufactured swine, livestock, and poultry facilities to be used for commercial purposes for housing, raising, or feeding of swine, livestock, or poultry animals or for housing equipment necessary for these commercial activities; building activities.
- b. Building materials, supplies, fixtures, and equipment to be that become a part of and are used in the construction, repair, or improvement and that become a part of an enclosure or a structure specifically designed, constructed, and used for such above commercial purposes; and commercially for housing, raising, or feeding animals or for housing equipment necessary for one of these commercial activities.
- c. Commercially manufactured swine, livestock, and poultry equipment, and parts and accessories therefor placed or installed in or affixed to such facilities, enclosures, or structures, for the equipment, used in a facility that is exempt from tax under this subdivision or in an enclosure or a structure whose building materials are exempt from tax under this subdivision."

Sec. 4. This act becomes effective August 1, 1995.

In the General Assembly read three times and ratified this the 25th day of July, 1995.

H.B. 873

## CHAPTER 478

AN ACT TO LIMIT THE SUBSTANCES THAT APPLICATORS OF PESTICIDES ARE AUTHORIZED TO APPLY AND TO PROVIDE FOR THE PESTICIDE APPLICATOR'S LICENSE TO BE REVOKED, SUSPENDED, OR DENIED FOR VIOLATING THIS LIMITATION.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 143-458 is amended by adding three new subsections to read:

"(c) A pesticide applicator, a pesticide applicator's employee, or an agent of a pesticide applicator shall not apply any substance that:

- (1) Has the active ingredients contained in a pesticide that is registered pursuant to G.S. 143-442, and
- (2) Is not registered as a pesticide pursuant to G.S. 143-442.

(d) A pesticide applicator, a pesticide applicator's employee, or an agent of a pesticide applicator shall not combine any substance whose application is prohibited under subsection (c) of this section with any other substance to apply as a pesticide or to apply for any other reason, whether the combination occurs before, during, or after the application.

(e) Any person who violates subsection (c) or (d) of this section shall be guilty of a Class 2 misdemeanor, which shall include a fine of up to one thousand dollars (\$1,000) per violation."

Sec. 2. G.S. 106-65.28(a) is amended by adding two new subdivisions to read:

"(14) Applying any substance that:

- a. Has the active ingredients contained in a pesticide that is registered pursuant to G.S. 143-442, but
- b. Is not registered as a pesticide pursuant to G.S. 143-442.

(15) Combining any substance whose application is prohibited under subdivision (14) of this subsection with any other substance to apply as a pesticide or to apply for any other reason, whether the combination occurs before, during, or after the application."

**Sec. 3.** This Act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 25th day of July, 1995.

S.B. 415

## CHAPTER 479

### AN ACT TO PROVIDE FOR THE MERGER OF BANKS AND SAVINGS INSTITUTIONS AND TO LIMIT THE SIMULTANEOUS CONVERSION/MERGERS OF MUTUAL AND STOCK INSTITUTIONS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 53-12 reads as rewritten:

*"§ 53-12. Merger or consolidation of banks, banks and savings associations.*

~~A bank may merge or consolidate with or transfer its assets and liabilities to another bank. Before such merger or consolidation or transfer shall become effective, each bank concerned in such merger or consolidation or transfer shall file, or cause to be filed, with the Commissioner of Banks, certified copies of all proceedings had by its directors and stockholders, which said stockholders' proceedings shall set forth that holders of at least two thirds of the stock voted in the affirmative on the proposition of merger or consolidation or transfer. Such stockholders' proceedings shall also contain a complete copy of the agreement made and entered into between said banks, with reference to such merger or consolidation or transfer. Upon the filing of such stockholders' and directors' proceedings as aforesaid, the Commissioner of Banks shall cause to be made an investigation of each bank to determine whether the interests of the depositors, creditors, and stockholders of each bank are protected, and find such merger or consolidation is in the public interest, and that such merger or consolidation or transfer is made for legitimate purposes, and his consent to or rejection of such merger or consolidation or transfer shall be based upon such investigation. No such merger or consolidation or transfer shall be made without the consent of the Commissioner of Banks. The expense of such investigation shall be paid by such banks. Notice of such merger or consolidation or transfer shall be published for four weeks before or after the same is to become effective, at the discretion of the Commissioner of Banks, in a newspaper published in a city, town, or county in which each of said banks is located, and a certified copy thereof shall be filed with the Commissioner of Banks. In case of either transfer or merger or consolidation the rights of creditors shall be preserved unimpaired, and the~~

~~respective companies deemed to be in existence to preserve such rights for a period of three years.~~

(a) A bank may merge, consolidate with, or transfer its assets and liabilities to another bank or to a savings association, or a savings association may transfer its assets and liabilities to a bank. Before such merger or consolidation or transfer shall become effective, each bank or savings association concerned in such merger or consolidation or transfer shall file, with the Commissioner of Banks, certified copies of all proceedings had by its directors and stockholders, or in the case of a mutual savings association, its directors and membership. The proceedings of the stockholders or membership shall set forth that (i) holders of at least two-thirds of the stock of the bank voted in the affirmative on the proposition of merger or consolidation or, (ii) in the case of a stock or mutual savings association, such percentage of the stock or of the membership as the laws applicable to such institutions require, voted in the affirmative on the proposition of merger or consolidation. The proceedings of the stockholders or memberships shall also contain a complete copy of the agreement made and entered into between said banks or savings associations, with reference to such merger or consolidation or transfer. Upon the filing of the proceedings as required by this section, the Commissioner of Banks may make an investigation of each bank or savings association, or both, to determine whether the interests of the depositors, creditors, and stockholders or members of each bank or savings association are protected, and if such merger or consolidation is in the public interest, and that such merger or consolidation or transfer is made for legitimate purposes. The Commissioner's consent to or rejection of such merger or consolidation or transfer shall be based upon such investigation. No merger or consolidation or transfer shall be made without the consent of the Commissioner of Banks. The expenses of any investigation shall be paid by the banks or savings associations, or both, involved in the proposed merger or consolidation or transfer. Notice of such merger or consolidation or transfer shall be published once a week for four consecutive weeks before the same is to become effective, at the discretion of the Commissioner of Banks, in a newspaper published in the county in which each of said banks or savings associations, or both, is located. If no newspaper is published in such county, then the notice shall be published in a newspaper having a general circulation in such county. A certified copy of the notice shall be filed with the Commissioner of Banks. In case of either transfer or merger or consolidation, the rights of creditors shall be preserved unimpaired and the respective companies deemed to be in existence to preserve such rights for a period of three years. For the purposes of this section, the term 'savings association' shall be construed to include a savings and loan association or a savings bank, whether organized under the laws of North Carolina or the United States.

(b) Unless otherwise required to be maintained, a bank may merge or otherwise consolidate into itself any subsidiary organized pursuant to G.S. 53-47, or acquired as a part of any merger or reorganization with another bank or bank holding company."

Sec. 2. G.S. 53-13 reads as rewritten:

" § 53-13. Merged or consolidated banks and savings associations deemed one bank, bank or savings association.

In case of merger or consolidation when the agreement of merger or consolidation is made, and a duly certified copy thereof is filed with the Secretary of State, together with a certified copy of the approval of the Commissioner of Banks to such merger or consolidation, the ~~banks~~, parties thereto, shall be held to be one company, possessed of the rights, privileges, powers, and franchises of the several companies, but subject to all the provisions of law under which it is created. The directors and other officers named in the agreement of consolidation shall serve until the first annual meeting for election of officers and directors, the date for which shall be named in the agreement. On filing such agreement, all and singular, the property and rights of every kind of the several companies shall thereby be transferred and vested in such surviving company in the case of merger or in such new company in the case of consolidation, and be as fully its property as they were of the companies parties to the agreement."

Sec. 3. G.S. 53-17 reads as rewritten:

" § 53-17. Fiduciary powers and liabilities of banks or trust companies merging or transferring assets and liabilities.

Whenever any ~~bank or trust company~~, bank, trust company, savings association, or savings bank, organized under the laws of North Carolina or ~~the acts of Congress, United States~~, and doing business in this State, shall consolidate or merge with or shall sell to and transfer its assets and liabilities to any other ~~bank or trust company~~ bank, trust company, savings association, or savings bank doing business in this State, as provided by the laws of North Carolina or ~~the acts of Congress, United States~~, all the then existing fiduciary rights, powers, duties and liabilities of such consolidating or merging or transferring ~~bank or banks and/or trust companies, institution~~, including the rights, powers, duties and liabilities as executor, administrator, guardian, trustee, and/or any other fiduciary capacity, whether under appointment by order of court, will, deed, or other instrument, shall, upon the effective date of such consolidation or merger or sale and transfer, vest in, devolve upon, and thereafter be performed by, the transferee ~~bank institution~~ or the consolidated or merged ~~bank or trust company, institution~~, and such latter ~~bank or trust company~~ institution shall be deemed substituted for and shall have all the rights and powers of the transferring ~~bank or trust company, institution~~."

Sec. 4. Article 3 of Chapter 54B of the General Statutes is amended by adding a new section to read:

" § 54B-37.1. Simultaneous conversion/merger.

(a) The Administrator shall not approve any application for the conversion of an association from mutual to stock form and its simultaneous (i) merger into a stock-owned savings institution or bank or (ii) acquisition by an operating financial institution holding company except as authorized in subsection (b) of this section. As used in this section, 'simultaneous conversion/merger' shall mean a transaction in which the members of a mutual association proposing to convert to stock form are offered the opportunity to purchase (i) stock in the savings institution or bank into



which it will be merged or (ii) stock in the holding company by which it will be acquired.

(b) The Administrator shall approve a plan of simultaneous conversion/merger only if:

(1) The transaction is proposed to address supervisory concerns of the Administrator as to the safety and soundness of the mutual association; or

(2) The mutual association:

a. Operates in a local market area in which long-term trends make reasonable growth, continued profitability, and safe and sound operation appear unlikely;

b. Furnishes evidence concerning its asset size, capital to assets ratio, and other factors, which may include a cost/benefit analysis, satisfactory to the Administrator that a simultaneous conversion/merger is more likely than remaining independent, merging with a mutual institution, converting to stock ownership, or other alternatives available to the association, to result in deposit, credit, and other financial services being provided within the local community safely and soundly on a long-term basis; and

c. Furnishes evidence satisfactory to the Administrator that no director, officer, or other person associated with the parties to the proposed transaction will receive benefits as a result of the simultaneous conversion/merger which in the aggregate exceed those permitted under federal regulations governing similar transactions.

(c) The Administrator may adopt rules to govern simultaneous conversion/mergers, which rules shall contain restrictions or limitations which equal or exceed the limitations or restrictions contained in the rules of federal regulatory agencies governing similar transactions. No plan of a simultaneous conversion/merger shall be approved by the Administrator unless it includes notification by first class mail to the members of the association to be acquired explaining the details of the plan including economic benefits or incentives to be received by officers and directors of the association, if any. Shares of stock in the acquiring entity purchased at a discount or otherwise by members of the association as part of the simultaneous conversion/merger shall be without limitation on subsequent sales by such members: provided, however, rules adopted by the Administrator may place limitations of the sale of such stock purchased by officers and directors of the association."

**Sec. 5.** G.S. 54C-35 reads as rewritten:

" § 54C-35. *Merger of like savings banks.*

Any two or more mutual savings banks or any two or more stock savings banks organized and operating, may merge or consolidate into a single savings bank. The procedure to effect the merger is as follows:

(1) The directors, or a majority of them, of the savings banks that desire to merge may, at separate meetings, enter into a written agreement of merger signed by them and under the corporate seals of the respective savings banks specifying each savings bank to be

merged and the savings bank that is to receive into itself the merging savings bank or banks, and prescribing the terms and conditions of the merger and the mode of carrying it into effect. The merger agreement may provide other provisions with respect to the merger as appear necessary or desirable, or as the Administrator may require.

- (2) The merger agreement together with copies of the minutes of the meetings of the respective boards of directors verified by the secretaries of the respective savings banks shall be submitted to the Administrator, who shall cause a careful investigation and examination to be made of the affairs of the savings banks proposing to merge, including a determination of their respective assets and liabilities. Each savings bank that is investigated and examined shall pay the cost and expense for the examination. If, as a result of the investigation, the Administrator concludes that the members or stockholders of each of the savings banks proposing to merge will be benefited by the merger, the Administrator shall, in writing, approve the merger. If the Administrator deems that the proposed merger will not be in the interest of all members or stockholders of the savings banks so merging, the Administrator shall, in writing, disapprove the merger. If the Administrator approves the merger agreement, then it shall be submitted, within 45 days after notice to the savings banks of the approval, to the members or stockholders of each savings bank, as provided in subdivision (3) of this section. The savings bank may appeal the disapproval of the merger to the Commission.

- (3) A meeting of the members or stockholders of each of the savings banks shall be held separately upon written notice of not less than 15 days to members or stockholders of each savings bank. The notice shall specify the time, place, and purpose for the calling of the meeting. Notice shall be made by personal service or postage prepaid mail to the last address of each member or stockholder appearing upon the records of the savings bank and by publication of notice at least once a week for two weeks preceding the meeting in one or more newspapers of general circulation in the county or counties where each savings bank has its principal or a branch office, or in a newspaper of general circulation in an adjoining county if none is available in the county. An appropriate officer of the savings bank shall make proof by affidavit at the meeting of the due service of the notice or call for the meeting. A special meeting of the members or stockholders of each of the savings banks shall be held separately upon notice of not less than 20 days to members or stockholders of each savings bank. The notice of meeting shall specify the time, place, and purpose of such meeting. Notice shall be given to members of each mutual savings bank in accordance with the methods specified in its charter and bylaws and by one or more of the following methods: (i) personal service or (ii) postage prepaid mail to the last address of each member appearing upon

the records of the savings bank. Provided; however, with respect to a merger of two mutual savings banks, as an alternative to the methods of notice specified above, the mutual savings bank which is to be the surviving savings bank of the proposed merger may provide the notice of meeting by publication of notice at least once a week for four consecutive weeks in one or more newspapers in general circulation in the county or counties in which the savings bank has its principal and any branch offices. Notice shall be given to stockholders of each stock-owned savings bank in accordance with the method specified for a meeting of stockholders in its charter and bylaws. The secretary or other officer of each savings bank shall make proof by certification at such meeting of the due service of the notice or call for said meeting.

- (4) At separate meetings of the members or stockholders of the respective savings banks, the members or stockholders may adopt, by an affirmative vote of a majority of the votes or shares present, in person or by proxy, a resolution to merge into a single savings bank upon the terms of the merger agreement as shall have been agreed upon by the directors of the respective savings banks and as approved by the Administrator. Upon the adoption of the resolution, a copy of the minutes of the proceedings of the meetings of the members or stockholders of the respective savings banks, certified by an appropriate officer of the merging savings banks, shall be filed in the office of the Administrator. Within 15 days after the receipt of a certified copy of the minutes of the meetings, the Administrator shall either approve or disapprove the proceedings for compliance with this section. If the Administrator approves the proceedings, the Administrator shall issue a certificate of approval of the merger. The certificate shall be filed and recorded in the office of the Secretary of State. When the certificate is so filed, the merger agreement shall take effect according to its terms and is binding upon all the members or stockholders of the savings banks merging, and it is deemed to be the act of merger of the constituent savings banks under the laws of this State, and the certificate or certified copy thereof is evidence of the agreement and act of merger of the savings banks and the observance and performance of all acts and conditions necessary to have been observed and performed precedent to the merger. Within 60 days after its receipt from the Secretary of State, the certified copy of the certificate shall be filed with the register of deeds of the county or counties in which the respective savings banks so merged have recorded their original certificates of incorporation. Failure to so file shall subject the savings bank to only a penalty of one hundred dollars (\$100.00) to be collected by the Secretary of State. If the Administrator disapproves the proceedings, the Administrator shall issue a written statement of the reasons for the disapproval and notify the savings banks to that effect. The savings banks may appeal the disapproval to the Commission.

- (5) Upon the merger of any savings bank, as above provided, into another:
- a. Its corporate existence is merged into that of the receiving savings bank; and all its right, title, interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of any conceivable value or benefit then existing belonging or pertaining to it, or which would inure to it under an unmerged existence, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of the receiving savings bank, which shall have, hold, and enjoy the same in its own right as fully and to the same extent as if the same were possessed, held, or enjoyed by the savings banks so merged; and the receiving savings bank shall absorb fully and completely the savings bank or banks so merged.
  - b. Its rights, liabilities, obligations, and relations to any person shall remain unchanged and the savings bank into which it has been merged shall, by the merger, succeed to all the relations, obligations, and liabilities as though it had itself assumed or incurred the same. No obligation or liability of a member, customer, or stockholder in a savings bank that is a party to the merger shall be affected by the merger, but obligations and liabilities shall continue as they existed before the merger, unless otherwise provided in the merger agreement.
  - c. A pending action or other judicial proceeding to which a savings bank that is so merged is a party, is not deemed to have abated or to have discontinued by reason of the merger, but may be prosecuted to final judgment, order, or decree in the same manner as if the merger had not been made; or the receiving savings bank may be substituted as a party to the action or proceeding, and any judgment, order, or decree may be rendered for or against it that might have been rendered for or against the other savings bank if the merger had not occurred.
- (6) Notwithstanding any other provision of this section, the Administrator may waive any or all of the foregoing requirements upon finding that waiver would be in the best interest of the members or stockholders of the merging savings banks."

Sec. 6. G.S. 54C-36 reads as rewritten:

" § 54C-36. ~~Merger of savings banks where ownership is converted. Simultaneous conversion/merger.~~

~~(a) Any two or more State mutual savings banks may merge to form a single State stock savings bank in separate merger-conversion proceedings or in simultaneous merger-conversion proceedings.~~

~~(b) Any two or more State stock savings banks may merge to form a single State mutual savings bank in separate merger-conversion proceedings or in simultaneous merger-conversion proceedings. The Administrator shall~~



not approve any application for the conversion of a savings bank from mutual to stock form and its simultaneous (i) merger into a stock-owned savings institution or bank or (ii) acquisition by an operating financial institution holding company except as authorized in subsection (b) of this section. As used in this section, 'simultaneous conversion/merger' shall mean a transaction in which the members of a mutual savings bank proposing to convert to stock form are offered the opportunity to purchase (i) stock in the savings institution or bank into which it will be merged or (ii) stock in the holding company by which it will be acquired.

(b) The Administrator shall approve a plan of simultaneous conversion/merger only if:

(1) The transaction is proposed to address supervisory concerns of the Administrator as to the safety and soundness of the mutual savings bank; or

(2) The mutual savings bank:

- a. Operates in a local market area in which long-term trends make reasonable growth, continued profitability, and safe and sound operation appear unlikely;
- b. Furnishes evidence concerning its asset size, capital to assets ratio, and other factors, which may include a cost/benefit analysis, satisfactory to the Administrator that a simultaneous conversion/merger is more likely than remaining independent, merging with a mutual institution, converting to stock ownership, or other alternatives available to the savings bank to result in deposit, credit, and other financial services being provided within the local community safely and soundly on a long-term basis; and
- c. Furnishes evidence satisfactory to the Administrator that no director, officer, or other person associated with the parties to the proposed transaction will receive benefits as a result of the simultaneous conversion/merger which in the aggregate exceed those permitted under the federal regulations governing similar transactions.

(c) The Administrator may adopt rules to govern simultaneous conversion/mergers, which rules shall contain restrictions or limitations which equal or exceed the limitations or restrictions contained in the rules of federal regulatory agencies governing similar transactions. No plan of a simultaneous conversion/merger shall be approved by the Administrator unless it includes notification by first class mail to the members of the savings bank to be acquired explaining the plan including economic benefits or incentives to be received by officers and directors of the association, if any. Shares of stock in the acquiring entity purchased at a discount or otherwise by members of the savings bank as part of the simultaneous conversion/merger shall be without limitation on subsequent sales by such members; provided, however, rules adopted by the Administrator may place limitations of the sale of such stock purchased by officers and directors of the savings bank."

Sec. 7. G.S. 54C-40 is amended by adding a new subsection to read:

"(d) A merger between a mutual savings bank and a mutual savings and loan association shall be conducted in accordance with the provisions of G.S. 54C-35."

**Sec. 8.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of July, 1995.

S.B. 754

**CHAPTER 480**

AN ACT TO ALLOW MOTOR VEHICLE DEALERS TO INCLUDE IN THEIR POSSESSORY LIENS AMOUNTS FOR RENTAL OF SUBSTITUTE VEHICLES, TO ALLOW LIENORS WHO PURCHASE FOR VALUE AT A SALE TO ACQUIRE CLEAR TITLE TO THE SAME EXTENT AS OTHER PURCHASERS, TO PERMIT A MOTOR VEHICLE DEALER TO NAME A SUCCESSOR TO THE FRANCHISE AND TO REQUIRE THAT OBJECTIONS TO THIS APPOINTMENT BE RAISED AT THE TIME THE APPOINTMENT IS MADE.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 44A-2(d) reads as rewritten:

"(d) Any person who repairs, services, tows, or stores motor vehicles in the ordinary course of his business pursuant to an express or implied contract with an owner or legal possessor of the motor vehicle has a lien upon the motor vehicle for reasonable charges for such repairs, servicing, towing, ~~or storing~~, storing, or for the rental of one or more substitute vehicles provided during the repair, servicing, or storage. This lien shall have priority over perfected and unperfected security interests."

**Sec. 2.** G.S. 44A-6 reads as rewritten:

"§ 44A-6. *Title of purchaser.*

A purchaser for value at a properly conducted sale, and a purchaser for value without constructive notice of a defect in the ~~sale who is sale~~, whether or not the purchaser is the lienor or an agent of the lienor, acquires title to the property free of any interests over which the lienor was entitled to priority."

**Sec. 3.** G.S. 20-305(7) reads as rewritten:

"(7) Notwithstanding the terms of any ~~franchise contract or agreement~~, to prevent or refuse to honor the succession to a ~~dealership~~ dealership, including the franchise, by ~~the a motor vehicle dealer's designated family member~~ successor as provided for under this subsection.

a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated family member successor to succeed in the ownership interest of the said owner in the new motor vehicle ~~dealership~~ dealership, including the franchise, upon the death or incapacity of the owner.

b. ~~Unless there exists good cause for refusal to honor succession on the part of the manufacturer or distributor, any designated family member of a deceased or incapacitated~~

~~owner of a new motor vehicle dealership may succeed to the ownership of the new motor vehicle dealership under the existing franchise provided that:~~

- ~~1. The designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to the ownership of the new motor vehicle dealership within 60 days of the owner's death or incapacity; Provided, however, that the failure of the designated family member to give the manufacturer or distributor written notice as provided above within 60 days of the owner's death or incapacity shall not result in the waiver or termination of the designated family member's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated family member or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated family member may give the notice required hereunder, provided the designated family member or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity; and~~
- ~~2. The designated family member agrees to be bound by all terms and conditions of the franchise,~~
- ~~c. The manufacturer or distributor may request, and the designated family member shall provide, promptly upon said request, personal and financial data that is reasonably necessary to determine whether the succession should be honored,~~
- ~~d. If a manufacturer or distributor believes that good cause exists for refusing to honor the succession to the ownership of a new motor vehicle dealership by a family member of a deceased or incapacitated owner of a new motor vehicle dealership under the existing franchise agreement, the manufacturer or distributor may, not more than 60 days following receipt of:~~
  - ~~1. Notice of the designated family member's intent to succeed to the ownership of the new motor vehicle dealer; or~~
  - ~~2. Any personal or financial data which it has requested, serve upon the designated family member and the Commissioner notice of its refusal to honor the succession and of its intent to discontinue the existing franchise with the dealer,~~
- ~~e. The notice must state the specific grounds for the refusal to honor the succession and of its intent to discontinue the~~

- existing franchise with the new motor vehicle dealer no sooner than 90 days from the date such notice is served,
- f. ~~If notice of refusal and discontinuance is not timely served upon the family member, the franchise shall continue in effect subject to termination only as otherwise permitted by this act.~~
- g. ~~Within 30 days of receiving the manufacturer's or distributor's notice of its intent to discontinue the existing franchise as provided in subsection d. above, the designated family member may file a written protest of the manufacturer's or distributor's decision with the Commissioner. When such a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the franchise shall continue in effect until the Commissioner has held a hearing, and thereafter, unless the Commissioner has determined that there is good cause for the manufacturer's or distributor's refusal to honor the succession. The Commissioner must conduct the hearing and render his final determination as expeditiously as possible, but in any event no later than 180 days after a protest is filed. Any parties to a hearing by the Commissioner concerning whether good cause exists for the refusal to honor the succession shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.~~
- h. ~~In determining whether good cause for the refusal to honor the succession exists, the manufacturer, distributor, factory branch, or importer has the burden of proving that the successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.~~
- b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:
1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated family member. Failure by the franchisor to



send notice of objection within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.

2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.
3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.
4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.
5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from a dealer of identity of the dealer's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.
6. In the event death or incapacity of the owner occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's rights

and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.

- c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the ownership rights and obligations of the owner in the new motor vehicle dealership and under the existing franchise.
- d. Within 60 days after the death or incapacity of the owner, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the ownership of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the owner's death or incapacity shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this paragraph, the manufacturer or distributor may request that the designated successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with

the procedures provided in sub-subdivisions b. 2.-5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and circumstances which did not exist at the time the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was either not produced or the material which was produced was incorrect.

e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the owner's death or incapacity, if so requested in writing by the manufacturer or distributor subsequent to the owner's death or incapacity.

i. f. This section does not preclude ~~the~~ an owner of a new motor vehicle dealership from designating any person as his successor by written instrument filed with the manufacturer or distributor. and, in the event there is a an inconsistency conflict between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section. and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor."

**Sec. 4.** Any owner of a new motor vehicle dealership who, prior to the effective date of this act, previously named or appointed a successor to succeed in the ownership interest of the said owner in such dealership, may obtain the benefits of this act by, at any time subsequent to the effective date of this act, providing or reproviding notice of such appointment or reappointment to the affected manufacturer or distributor and otherwise complying with the provisions of G.S. 20-305(7) a. through f. above.

**Sec. 5.** Nothing contained in Sections 3 or 4 of this act shall be deemed to revoke or otherwise invalidate or render unenforceable the appointment, prior to the effective date of this act, by any owner of a new motor vehicle dealership of any successor to succeed in the ownership interest of the said owner in such dealership.

**Sec. 6.** Sections 3 through 5 of this act become effective October 1, 1995, and shall be applicable on and after said date to the appointment by any owner of a new motor vehicle dealership of any successor to succeed in the ownership interest of the said owner in such dealership. Sections 1 and 2 of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of July, 1995.

S.B. 776

## CHAPTER 481

## AN ACT TO ESTABLISH A TASK FORCE TO DETERMINE A MINIMUM REIMBURSEMENT RATE FOR ADULT DEVELOPMENTAL ACTIVITY PROGRAMS (ADAP).

*The General Assembly of North Carolina enacts:*

**Section 1.** The Secretary of the Department of Human Resources shall establish in the Office of the Secretary a special task force to determine a minimum reimbursement rate for Adult Developmental Activity Programs (ADAP). In addition, this task force shall review the current funding stream to ensure that it is the most effective way possible to provide day services to adults with developmental disabilities, including which division within the Department is most appropriate for this program. The task force shall report to the Mental Health Study Commission the results of its study in time for these results to be included in the Mental Health Study Commission's report to the 1995 General Assembly, Regular Session 1996. The task force shall terminate after the presentation of its report to the Commission.

At a minimum, the task force shall consist of:

- (1) Two representatives from community rehabilitation programs;
- (2) A representative from the Department of Human Resources;
- (3) A representative from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services;
- (4) A representative from the Division of Vocational Rehabilitation; and
- (5) A representative from the Association for Retarded Citizens.

This task force shall be funded by funds available to the Department.

**Sec. 2.** This act becomes effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of July, 1995.

H.B. 443

## CHAPTER 482

## AN ACT TO REQUIRE ALL REAL ESTATE APPRAISERS TO BE LICENSED AND TO PROVIDE FOR THE REGISTRATION OF TRAINEE REAL ESTATE APPRAISERS.

*The General Assembly of North Carolina enacts:*

**Section 1.** Article 1 of Chapter 93E of the General Statutes is amended by adding a new section to read:

"§ 93E-1-2.1. *License or certificate required of real estate appraisers.*

Beginning October 1, 1995, it shall be unlawful for any person in this State to act as a real estate appraiser, to directly or indirectly engage or assume to engage in the business of real estate appraisal, or to advertise or hold himself or herself out as engaging in or conducting the business of real estate appraisal without first obtaining a license or certificate issued by the Appraisal Board under the provisions of this Chapter."

**Sec. 2.** G.S. 93E-1-3 reads as rewritten:

" § 93E-1-3. ~~License~~ *When license or certificate not required.*

(a) No license or certificate shall be issued under the provisions of this Chapter to a partnership, association, corporation, firm, or group. However, nothing herein shall preclude a State-licensed or State-certified real estate appraiser from rendering appraisals for or on behalf of a partnership, association, corporation, firm, or group, provided the appraisal report is prepared by ~~or a State-licensed or State-certified real estate appraiser~~ or by a registered trainee under the immediate personal direction of, the State-licensed or State-certified real estate appraiser and is reviewed and signed by ~~such that~~ State-licensed or State-certified appraiser.

(b) Any person who is not State-licensed or State-certified under this Chapter may assist a State-licensed or State-certified real estate appraiser in the performance of an appraisal provided that ~~he~~ the person is registered trainee and is actively and personally supervised by a State-certified appraiser and provided further that any appraisal report rendered in connection with the appraisal is reviewed and signed by the State-certified real estate appraiser.

(c) Nothing in this Chapter shall preclude a real estate broker or salesman licensed under Chapter 93A of the General Statutes ~~or any other person who is not a State-licensed or State-certified real estate appraiser~~ from appraising real estate for compensation, performing comparative market analysis, provided ~~such persons do~~ the person does not represent ~~themselves~~ himself or herself as being State-licensed or State-certified as a real estate ~~appraisers, appraiser.~~

(d) Nothing in this Chapter shall abridge, infringe upon, or otherwise restrict the right to use the term 'certified ad valorem tax appraiser' or any similar term by persons certified by the Department of Revenue to perform ad valorem tax appraisals, provided that ~~such~~ the term is not used in a manner that creates the impression of certification by the State of ~~North Carolina~~ to perform real estate appraisals other than ad valorem tax appraisals.

(e) Nothing in this Chapter shall entitle a State-licensed or State-certified real estate appraiser to appraise real estate for ad valorem tax purposes unless ~~he~~ the person has first been certified by the Department of Revenue pursuant to G.S. 105-294.

(f) A license or certificate is not required under this Chapter for:

- (1) Any person, partnership, association, or corporation that performs appraisals of property owned by that person, partnership, association, or corporation;
- (2) Any court-appointed commissioner who conducts an appraisal pursuant to a judicially ordered evaluation of property;
- (3) Any person to qualify as an expert witness for court or administrative agency testimony, if otherwise qualified;
- (4) A person who appraises standing timber so long as the appraisal does not include a determination of value of any land;
- (5) Any person employed by a lender in the performance of appraisals with respect to which federal regulations do not require a licensed or certified appraiser; and



- (6) A person who performs ad valorem tax appraisals and is certified by the Department of Revenue under G.S. 105-294 or G.S. 105-296;

however, any person who is registered, licensed, or certified under this Chapter and who performs any of the activities set forth in subdivisions (1) through (5) of this subsection must comply with all of the provisions of this Chapter."

**Sec. 3.** Article 1 of Chapter 93E of the General Statutes is amended by adding a new section to read:

"§ 93E-1-3.1. *Prohibited use of title; permissible use of title.*

(a) It shall be unlawful for any person to assume or use the title 'State-licensed real estate appraiser', 'State-certified real estate appraiser', or any title designation or abbreviation likely to create the impression of licensure or certification as a real estate appraiser, unless the person is licensed or certified by the Appraisal Board in accordance with the provisions of this Chapter. The Board may adopt for the exclusive use of persons certified under the provisions of this Chapter, a seal, symbol, or other mark identifying the user as a State-licensed or State-certified real estate appraiser.

(b) Any person certified as a real estate appraiser by an appraisal trade organization shall retain the right to use the term 'certified' or any similar term in identifying the person to the public, provided that:

- (1) In each instance wherein the term is used, the name of the certifying organization or body is prominently and conspicuously displayed immediately adjacent to the term; and
- (2) The use of the term does not create the impression of certification by the State.

This subsection does not entitle any person certified only by a trade organization to conduct an appraisal that requires a State license or certification.

(c) The term 'State-licensed real estate appraiser', 'State-certified real estate appraiser', or any similar term shall not be used following or immediately in connection with the name of a partnership, association, corporation, or other firm or group, or in a manner that might create the impression of licensure or certification as a real estate appraiser under this Chapter."

**Sec. 4.** G.S. 93E-1-4 reads as rewritten:

"§ 93E-1-4. *Definitions.*

When used in this Chapter, unless the context otherwise requires, the term:

- (1) 'Appraisal' or 'real estate appraisal' means an analysis, opinion, or conclusion as to the value of identified real estate or specified interests therein performed for compensation or other valuable consideration.
- (2) 'Appraisal assignment' means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased appraisal.
- (3) 'Appraisal Board' or 'Board' means the North Carolina Appraisal Board established under G.S. 93E-1-5.

- (4) 'Appraisal Foundation' or 'Foundation' means The Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois.
- (5) 'Appraisal report' means any communication, written or oral, of an appraisal.
- (6) 'Certificate' means that document issued by the North Carolina Appraisal Board evidencing that the person named therein has satisfied the requirements for certification as a State-certified real estate appraiser and bearing a certificate number assigned by the Board.
- (7) 'Certificate holder' means a person certified by the Board under the provisions of this Chapter.
- (7a) 'Comparative market analysis' means the analysis of sales of similar recently sold properties in order to derive an indication of the probable sales price of a particular property by a licensed real estate broker or salesperson for the broker's or salesperson's principal.
- (8) 'License' means that document issued by the North Carolina Appraisal Board evidencing that the person named therein has satisfied the requirements for licensure as a State-licensed real estate appraiser and bearing a license number assigned by the Board.
- (9) 'Licensee' means a person licensed by the Board under the provisions of this Chapter.
- (10) 'Real estate' or 'real property' means land, including the air above and ground below and all appurtenances and improvements thereto, as well as any interest or right inherent in the ownership of land.
- (11) 'Real estate appraiser' or 'appraiser' means a person who for a fee or valuable consideration develops and communicates real estate appraisals or otherwise gives an opinion of the value of real estate or any interest therein.
- (12) 'Real estate appraising' means the practice of developing and communicating real estate appraisals.
- (13) 'Residential real estate' means any parcel of real estate, improved or unimproved, that is exclusively residential in nature and that includes or is intended to include a residential structure containing not more than four dwelling units and no other improvements except those which are typical residential improvements that support the residential use for the location and property type. A residential unit in a condominium, town house, or cooperative complex, or planned unit development is considered to be residential real estate.
- (14) 'State-certified general real estate appraiser' means a person who holds a current, valid certificate as a State-certified general real estate appraiser issued under the provisions of this Chapter.
- (15) 'State-certified residential real estate appraiser' means a person who holds a current, valid certificate as a State-certified

- residential real estate appraiser issued under the provisions of this Chapter.
- (16) 'State-licensed residential real estate appraiser' means a person who holds a current, valid license as a State-licensed residential real estate appraiser issued under the provisions of this Chapter.
  - (17) 'Temporary appraiser licensure or certification' means the issuance of a temporary license or certificate by the Board to a person licensed or certified in another state who enters this State for the purpose of completing a particular appraisal assignment.
  - (18) 'Trainee', 'registered trainee', or 'trainee real estate appraiser' means a person who has satisfied the requirements to be registered as a trainee pursuant to G.S. 93E-1-6, but who has not satisfied the experience and other requirements set forth in G.S. 93E-1-6 to be licensed as a real estate appraiser.
  - (19) 'Trainee registration' or 'registration as a trainee' means the document issued by the North Carolina Appraisal Board evidencing that the person named therein has satisfied the requirements of registration as a trainee real estate appraiser and bearing a registration number assigned by the Board.'

**Sec. 5.** G.S. 93E-1-5(a) reads as rewritten:

"(a) There is created the North Carolina Appraisal Board for the purposes set forth in this Chapter. The Board shall consist of seven members. The Governor shall appoint five members of the Board, and the General Assembly shall appoint two members in accordance with G.S. 120-121, one upon the recommendation of the President Pro Tempore of the Senate and one upon the recommendation of the Speaker of the House of Representatives. Each member appointed by the Governor shall be appointed from a different congressional district. The appointee recommended by the Speaker of the House of Representatives and the appointees of the Governor shall be persons who have been engaged in the business of real estate appraising in this State for at least five years immediately preceding their appointment and are also State-licensed or State-certified real estate appraisers. No more than three of the appointees may be members of the same appraiser trade organization, group, or committee at any one time. The appointee recommended by the President Pro Tempore of the Senate shall be a person not involved directly or indirectly in the real estate, real estate appraisal, or the real estate lending industry. Members of the Board shall serve three-year terms, so staggered that the terms of three members expire in one year, the terms of two members expire in the next year, and the terms of two members expire in the third year of each three-year period. The members of the Board shall elect one of their members to serve as chairman of the Board for a term of one year. The Governor may remove any member of the Board appointed by the Governor for misconduct, incompetency, or neglect of duty. The General Assembly may remove any member appointed by it for the same reasons. Successors shall be appointed by the appointing authority making the original appointment. All vacancies occurring on the Board shall be filled, for the unexpired term, by the appointing authority making the original appointment. Vacancies in appointments made by the General Assembly

shall be filed in accordance with G.S. 120-122. Initial terms of office commence July 1, 1994."

**Sec. 6.** G.S. 93E-1-6 reads as rewritten:

"§ 93E-1-6. *Qualifications for State licensure and certification; applications; application fees; examinations.*

(a) Any person desiring to be registered as a trainee or to obtain licensure as a State-licensed real estate appraiser or certification as a State-certified real estate appraiser shall make written application to the Board on such the forms as are prescribed by the Board setting forth the applicant's qualifications for licensure or certification. Each applicant shall satisfy the following qualification requirements:

- (1) Each applicant for licensure as a State-licensed residential real estate appraiser shall have demonstrated that ~~he~~ the applicant possesses the knowledge and competence necessary to perform appraisals of residential and other real estate as the Board may prescribe by having satisfactorily completed within the five-year period immediately preceding the date application is made, a Board-approved course of instruction in real estate appraisal principles and practices consisting of at least 90 hours of classroom instruction in subjects determined by the Board; shall present evidence satisfactory to the Board of at least 2,000 hours of experience in real estate appraising; and shall satisfy ~~such~~ the additional qualifications as may be imposed by the Board by rule, not inconsistent with any requirements imposed by the federal government; or shall possess education or experience which is found by the Board in its discretion to be equivalent to the above requirements.
- (2) Each applicant for certification as a State-certified residential real estate appraiser shall have demonstrated that ~~he~~ the applicant possesses the knowledge and competence necessary to perform appraisals of residential and other real estate as the Board may prescribe by having satisfactorily completed, within the five-year period immediately preceding the date the application is made, a Board-approved course of instruction in real estate appraisal principles and practices consisting of at least 120 hours of classroom instruction in subjects determined by the Board; shall present evidence satisfactory to the Board of at least 2,000 hours of experience in real estate appraising within the five-year period immediately preceding the date application is made, and over a period of at least two calendar years; and shall satisfy ~~such~~ the additional qualifications criteria as may be imposed by the Board by rule, not inconsistent with any requirements imposed by the federal government; or shall possess education and experience which is found by the Board in its discretion to be equivalent to the above requirements.
- (3) Each applicant for certification as a State-certified general real estate appraiser shall have demonstrated that ~~he~~ the applicant possesses the knowledge and competence necessary to perform appraisals of all types of real estate by having satisfactorily



completed, within the five-year period immediately preceding the date application is made, a Board-approved course of instruction in general real estate appraisal practices consisting of at least 180 hours of classroom instruction in subjects determined by the Board; shall present evidence satisfactory to the Board of at least 2,000 hours of experience in real estate appraising within the five-year period immediately preceding the date application is made, and over a period of at least two calendar years, fifty percent (50%) of which must be in appraising nonresidential real estate; and shall satisfy ~~such~~ the additional qualifications criteria as may be imposed by the Board by rule, not inconsistent with any requirements imposed by the federal government; or the applicant shall possess education or experience which is found by the Board to be equivalent to the above requirements.

- (4) Each applicant for registration as a trainee must demonstrate to the Board that the applicant possesses the knowledge and competence necessary to perform an appraisal of residential and other real estate, as prescribed by the Board, by:
- a. Having satisfactorily completed within the five-year period immediately preceding the date application is made, a course, approved by the Board, of instruction in real estate appraisal principles and practices consisting of at least 90 hours of classroom instruction in subjects determined by the Board;
  - and
  - b. Satisfying any additional qualifications the Board imposes by rule, not inconsistent with any requirements imposed by the federal government;
  - or shall possess education or experience that the Board, in its discretion, determines to be equivalent to the requirements set forth in sub-subdivisions a. and b. of this subdivision.

Provided, however, that any persons who, on the effective date of this Chapter, have a State license or certificate to engage in business as a real estate appraiser issued by the predecessor of the Board, shall be entitled to and shall receive the same ~~such~~ license or certificate from the Board as they are then holding without further education, experience, examination, or application fee.

(b) Each application for registration as a trainee or for State licensure or certification as a real estate appraiser shall be accompanied by a fee of one hundred fifty dollars (\$150.00), plus ~~such~~ any additional fee as may be necessary to defray the cost of any competency examination administered by a private testing service.

(c) Any person who files with the Board an application for State licensure or certification as a real estate appraiser shall be required to pass an examination to demonstrate ~~his~~ the person's competence. The Board shall also make ~~such~~ an investigation as it deems necessary into the background of the applicant to determine ~~his~~ the applicant's qualifications with due regard to the paramount interest of the public as to ~~his~~ the applicant's honesty, truthfulness, and integrity. If the results of the investigation shall be satisfactory to the Board and the applicant is otherwise qualified, then the



Board shall issue to the applicant a license or certificate authorizing the applicant to act as a State-licensed real estate appraiser or a State-certified real estate appraiser in this State. If, based upon the results of the investigation, the moral character of the applicant is in question, action on the application will be deferred pending a hearing before the Board.

(d) Any person who files with the Board an application for registration as a trainee real estate appraiser shall be required to pass an examination to demonstrate the person's competence. The Board shall also make an investigation as it deems necessary into the background of the applicant to determine the applicant's qualifications with due regard to the paramount interest of the public as to the applicant's honesty, truthfulness, and integrity. If the results of the investigation shall be satisfactory to the Board and the applicant is otherwise qualified, then the Board shall issue to the applicant a registration authorizing the applicant to act as a registered trainee real estate appraiser in this State. If, based upon the results of the investigation, the moral character of the applicant is in question, action on the application will be deferred pending a hearing before the Board."

Sec. 7. G.S. 93E-1-7 reads as rewritten:

"§ 93E-1-7. License Registration, license and certificate renewal; renewal fees; continuing education; reinstatement; replacement licenses and certificates; licensure and certification history.

(a) Licenses Trainee registrations, licenses, and certificates issued under this Chapter shall expire on the 30th day of June of every year and shall become invalid after that date unless renewed prior to the expiration date by filing an application with and paying to the Executive Director of the Board the fee of two hundred dollars (\$200.00). As a prerequisite to the renewal of a trainee registration or a real estate appraiser license or certificate, the licensee trainee registration holder, the licensee, or the certificate holder must satisfy any continuing education requirements which that may be prescribed by the Board under G.S. 93E-1-7(b); subsection (b) of this section; provided, however, that members of the General Assembly are exempt from this requirement during their term of office. The Board may adopt rules establishing a system of license trainee registration, license, and certificate renewal in which licenses trainee registrations, licenses, and certificates expire annually with varying expiration dates.

(b) The Board may by rule require, as a prerequisite to license trainee registration, license, or certificate renewal, the completion of Board-approved education courses in subject matters determined by the Board, or courses determined by the Board to be equivalent to such the instruction, not inconsistent with any requirements of federal authorities.

(c) All licenses trainee registrations, licenses, and certificates reinstated after the expiration dates shall be subject to a late filing fee of five dollars (\$5.00) per month for each month or part thereof that such license the trainee registration, license, or certificate is lapsed, not to exceed sixty dollars (\$60.00). Such The late filing fee shall be in addition to the required renewal fee. In the event a licensee trainee, licensee, or certificate holder fails to reinstate his license the trainee registration, license, or certificate within 12 months after the expiration date thereof, the Board may, in its discretion, consider such the person as not having been previously

licensed registered, licensed, or certified, and thereby subject to the provisions of this Chapter relating to the issuance of an original license trainee registration, license, or certificate, including the examination requirements set forth herein. Applications to reinstate licenses trainee registrations, licenses, or certificates expired for 12 or more months shall be accompanied by the fee required for an original license trainee registration, license, or certificate.

(d) Replacement licenses trainee registrations, licenses, and certificates may be issued by the Board upon payment of five dollars (\$5.00) by the licensee trainee, licensee, or certificate holder. Certification by the Board of the trainee registration history or the licensure or certification history of a person licensed registered, licensed, or certified under this Chapter shall be made only after the payment of a fee of ten dollars (\$10.00) to the Board."

Sec. 8. G.S. 93E-1-11 reads as rewritten:

"§ 93E-1-11. *Register of applicants; roster of State-licensed and State-certified appraisers; financial report to Secretary of State; administrative expenses.*

(a) The Executive Director of the Board shall keep a register of all applicants for State trainee registration or for State licensure or certification as real estate appraisers, showing for each the date of application, name, business or residence address, and whether the license or certificate was granted or refused. Said The register shall be prima facie evidence of all matters received therein.

(b) The Executive Director of the Board shall also keep a current roster showing the names and places of business of all registered trainees and State-licensed and State-certified real estate appraisers, which roster shall be kept on file in the office of the Board and be open to public inspection.

(c) On or before the first day of November of each year, the Board shall file with the Secretary of State a copy of the roster of registered trainees and real estate appraisers licensed or certified by the Board and a report containing a complete statement of income received by the Board in connection with the trainee registration and the licensure and certification of real estate appraisers for the preceding fiscal year ending June 30th, attested by the affidavit of the Executive Director of the Board.

(d) In addition to those fees prescribed in this Chapter for making application for and renewing appraiser licenses and certificates, the Board may collect from applicants and holders of such the licenses and certificates and remit to the appropriate agency or instrumentality of the federal government any additional fees as may be required to render North Carolina State-licensed or State-certified appraisers eligible to perform appraisals in connection with federally related transactions as well as an additional fee of twenty dollars (\$20.00) to cover the administrative costs associated therewith."

Sec. 9. G.S. 93E-1-12 read as rewritten:

"§ 93E-1-12. *Disciplinary action by Board.*

(a) The Board may take disciplinary action against registered trainees and State-licensed or State-certified real estate appraisers. Upon its own motion or the complaint of any person, the Board may investigate the actions of any person registered as a trainee or licensed or certified as a real estate appraiser under this Chapter, any person who performs appraisals without

an appropriate ~~license~~ registration, license, or certificate, or any person who holds himself or herself out to be registered as a trainee or licensed or certified as a real estate appraiser when ~~he~~ the person holds no ~~such license~~ registration, license, or certificate. If the Board finds probable cause to believe that a person registered as a trainee or licensed or certified as a real estate appraiser under this Chapter has violated any of the provisions of this Chapter, the Board may hold a hearing on the allegations of misconduct.

The Board may suspend or revoke the ~~license~~ registration, license, or certificate granted to any person under the provisions of this Chapter or reprimand any ~~licensee~~ registered trainee, licensee, or certificate holder if, following a hearing, the Board finds the ~~licensee~~ registered trainee, licensee, or certificate holder to have:

- (1) Procured ~~license~~ registration, licensure, or certification pursuant to this Chapter by making a false or fraudulent representation;
- (2) Made any willful or negligent misrepresentation or any willful or negligent omission of material fact;
- (3) Accepted an appraisal assignment when the employment is contingent upon the appraiser reporting a predetermined result, analysis, or opinion, or when the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached or upon consequences resulting from the appraisal assignment;
- (4) Acted or held himself or herself out as a registered trainee or a State-licensed or State-certified real estate appraiser when not so ~~licensed~~ registered, licensed, or certified;
- (5) Failed as a State-licensed or State-certified real estate appraiser to actively and personally supervise any person not licensed or certified under this Chapter who assists the State-licensed or State-certified real estate appraiser in performing real estate appraisals;
- (6) Failed to make available to the Board for its inspection without prior notice, originals or true copies of all written contracts engaging ~~his~~ the person's services to appraise real property, and all reports and supporting data assembled and formulated by the appraiser in preparing the reports;
- (7) Paid a fee or valuable consideration to any person for acts or services performed in violation of this Chapter;
- (8) Acted as a real estate appraiser in ~~such~~ an unworthy or incompetent manner as to endanger the interest of the public;
- (9) Violated any of the standards of practice for real estate appraisers or any other rule promulgated by the Board;
- (10) Performed any other act which constitutes improper, fraudulent, or other dishonest conduct; or
- (11) Violated any of the provisions of this Chapter.

The Executive Director of the Board shall transmit a certified copy of all final orders of the Board suspending or revoking licenses or certificates issued under this Chapter to the clerk of superior court of the county in which the licensee or certificate holder maintains ~~his~~ the person's principal

place of business. The clerk shall enter these orders upon the judgment docket of the county.

(b) Following a hearing, the Appraisal Board may also suspend or revoke any license registration, license, or certificate issued under the provisions of this Chapter or reprimand any licensee registered trainee, licensee, or certificate holder when:

- (1) The licensee registered trainee, licensee, or certificate holder has been convicted of or has entered a plea of guilty or no contest upon which final judgment is entered by a court of competent jurisdiction in this State, or any other state, to an offense which, in the discretion of the Board, would reasonably affect the performance of the licensee registered trainee, licensee, or certificate holder in the real estate appraisal business;
- (2) A final civil judgment has been entered against the licensee registered trainee, licensee, or certificate holder on grounds of fraud, misrepresentation, or deceit in the making of any appraisal of real estate; or
- (3) The licensee registered trainee, licensee, or certificate holder has violated any of the provisions of G.S. 93E-1-13(a) when appraising his own property.

(c) When a person registered as a trainee or licensed or certified as a real estate appraiser under this Chapter is accused of any act, omission, or misconduct which would subject him the person to disciplinary action, the licensee registered trainee, licensee, or certificate holder, with the consent and approval of the Board, may surrender his license or her registration, license, or certificate and all the rights and privileges pertaining to it for a period of time established by the Board. A person who surrenders his license or her registration, license, or certificate shall not thereafter be eligible for or submit any application for licensure registration, licensure, or certification as a real estate appraiser during the period that the license registration, license, or certificate is surrendered.

(d) The Board shall have the power to issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation, inquiry, or other proceeding conducted by it. Upon the production of any papers, records, or documents, the Board shall have the power to authorize true copies thereof to be substituted in the permanent record of the matter in which such the books, records, or documents shall have been introduced in evidence."

**Sec. 10.** G.S. 93E-1-13(a) reads as rewritten:

"(a) Any person who acts as, or holds himself or herself out to be, a registered trainee or a State-licensed or State-certified real estate appraiser without first obtaining a license registration, license, or certificate as provided in this Chapter, or who willfully performs the acts specified in G.S. 93E-1-12(a)(1) through (10), shall be guilty of a Class 1 misdemeanor."

**Sec. 11.** G.S. 93E-1-14 reads as rewritten:

"§ 93E-1-14. *Referral of cases by courts.*

Whenever any licensee registered trainee, licensee, or certificate holder is adjudged by a civil or criminal court to have injured or damaged any



person, partnership, association, or corporation through gross negligence, incompetency, fraud, dishonesty, or other civil or criminal misconduct, ~~such~~ the court may, as part of its judgment or decree, order a written copy of the transcript of the record in said case to be forwarded by the clerk of court to the Board with a recommendation that the ~~license registration, license, or certificate of the licensee registered trainee, licensee, or certificate holder be~~ revoked or otherwise subject to disciplinary action."

**Sec. 12.** G.S. 93E-1-2 is repealed.

**Sec. 13.** This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 26th day of July, 1995.

H.B. 594

## CHAPTER 483

### AN ACT TO PROHIBIT DISCRIMINATION IN HEALTH AND ACCIDENT INSURANCE AGAINST COVERAGE FOR PROCEDURES INVOLVING CERTAIN BONES OR JOINTS.

*The General Assembly of North Carolina enacts:*

**Section 1.** Chapter 58 of the General Statutes is amended by adding the following new section to read:

"§ 58-3-121. Discrimination against coverage of certain bones and joints prohibited.

(a) Discrimination against coverage of procedures involving bones or joints of the jaw, face, or head is prohibited in any health benefit plan. Whenever a health benefit plan provides coverage on a group or individual basis for diagnostic, therapeutic, or surgical procedures involving bones or joints of the human skeletal structure, that plan may not exclude or deny the same coverage for procedures involving any bone or joint of the jaw, face, or head, so long as the procedure is medically necessary to treat a condition which prevents normal functioning of the particular bone or joint involved and the condition is caused by congenital deformity, disease, or traumatic injury. The coverage required by this section involving bones or joints of the jaw, face, or head shall be subject to the same conditions and limitations as are applicable to coverage of procedures involving other bones and joints of the human skeletal structure.

(b) For purposes of this section, in providing coverage for the treatment of conditions of the jaw (temporomandibular joint), authorized therapeutic procedures shall include splinting and use of intraoral prosthetic appliances to reposition the bones. Payment for these therapeutic procedures, and for procedures involved in any other nonsurgical treatment of temporomandibular joint dysfunction, may be subjected to a reasonable lifetime maximum dollar amount. Nothing in this subsection shall require a health benefit plan to cover orthodontic braces, crowns, bridges, dentures, treatment for periodontal disease, dental root form implants, or root canals.

(c) For purposes of this section, 'health benefit plan' means accident and health insurance policies or certificates; nonprofit hospital or medical service corporation contracts; health, hospital, or medical service corporation plan contracts; health maintenance (HMO) subscriber contracts; and plans



provided by a MEWA or plans provided by other benefit arrangements, to the extent permitted by ERISA."

**Sec. 2.** This act becomes effective January 1, 1996, and applies to all health benefit plans that are delivered, issued for delivery, or renewed on and after that date. For purposes of this act, renewal is presumed to occur on each anniversary of the date when coverage was first effective on the person or persons covered by the plan.

In the General Assembly read three times and ratified this the 26th day of July, 1995.

H.B. 836

## CHAPTER 484

AN ACT TO EXPEDITE THE ENVIRONMENTAL PERMITTING PROCESS BY ALLOWING THE OPTION OF SUBMITTING PERMIT APPLICATIONS CERTIFIED BY A PROFESSIONAL ENGINEER AND ALLOWING THESE APPLICATIONS TO BE EXPEDITIOUSLY PROCESSED BY PROVIDING EARLY PUBLIC NOTICE, PUBLIC HEARING, AND TECHNICAL REVIEW, AND TO INCREASE THE MAXIMUM AMOUNT OF THE FEE THAT THE ENVIRONMENTAL MANAGEMENT COMMISSION MAY ASSESS FOR PROCESSING AN APPLICATION FOR A PERMIT UNDER THE WATER AND AIR QUALITY PROGRAMS.

*The General Assembly of North Carolina enacts:*

**Section 1.** The General Assembly finds that the increasing complexity of environmental laws and rules have made the environmental permitting process increasingly lengthy and that there are instances where it would be appropriate and beneficial to allow an applicant for an environmental permit the option of submitting an application that meets certain additional standards and to ensure that these applications will be expeditiously processed by providing early public notice, public hearing, and technical review within the Department of Environment, Health, and Natural Resources.

**Sec. 2.** G.S. 143-215.108 is amended by adding two new subsections to read:

"(h) Expedited Review of Applications Certified by a Professional Engineer. -- The Commission shall adopt rules governing the submittal of permit applications certified by a professional engineer, including draft permits, that can be sent to public notice and hearing upon receipt and subjected to technical review by personnel within the Department. These rules shall specify, at a minimum, any forms to be used; a checklist for applicants that lists all items of information required to prepare a complete permit application; the form of the certification required on the application by a professional engineer; and the information that must be included in the draft permit. The Department shall process an application that is certified by a professional engineer as provided in subdivisions (1) through (7) of this subsection.

(1) Initiation of Review. Upon receipt of an application certified by a professional engineer in accordance with this subsection and the

rules adopted pursuant to this subsection, the Department shall determine whether the application is complete as provided in subdivision (2) of this subsection. Within 30 days after the date on which an application is determined to be complete, the Department shall:

- a. Publish any required notices, using the draft permit included with the application;
  - b. Schedule any required public meetings or hearings on the application and permit; and
  - c. Initiate any and all technical review of the application in a manner to ensure substantial completion of the technical review by the time of any public hearing on the application, or if there is no hearing, by the close of the notice period.
- (2) Completeness Review. Within 10 working days of receipt of the permit application certified by a professional engineer under this subsection, the Department shall determine whether the application is complete for purposes of this subsection. The Department shall determine whether the permit application certified by a professional engineer is complete by comparing the information provided in the application with the checklist contained in the rules adopted by the Commission pursuant to this subsection.
- a. If the application is not complete, the Department shall promptly notify the applicant in writing of all deficiencies of the application, specifying the items that need to be included, modified, or supplemented in order to make the application complete, and the 10-day time period is suspended after this request for further information. If the applicant submits the requested information within the time specified, the 10-day time period shall begin again on the day the additional information was submitted. If the additional information is not submitted within the time periods specified, the Department shall return the application to the applicant, and the applicant may treat the return of the application as a denial of the application or may resubmit the application at a later time.
  - b. If the Department fails to notify the applicant that an application is not complete within the time period set forth in this subsection, the application shall be deemed to be complete.
- (3) Time for Permit Decision. For any application found to be complete under subdivision (2) of this subsection, the Department shall issue a permit decision within 30 days of the last day of any public hearing on the application, or if there is no hearing, within 30 days of the close of the notice period.
- (4) Rights if Permit Decision Not Made in Timely Fashion. If the Department fails to issue a permit decision within the time periods specified in subdivision (3) of this subsection, the applicant may take any of the following actions:

- a. Take no action, thereby consenting to the continued review of the application; or
  - b. Treat the action as a denial of the application and appeal the denial under Article 3 of Chapter 150B of the General Statutes.
- (5) Power to Halt Review. At any time after the permit application certified by a professional engineer has been determined to be complete under subdivision (2) of this subsection, the Department may immediately terminate review of that application, including technical review and any hearings or meetings scheduled on the application, upon a determination of one of the following:
- a. The permit application is not in substantial compliance with the applicable rules; or
  - b. The applicant failed to pay all permit application fees.
- (6) Rights if Review Halted. If the Department terminates review of an application under subdivision (5) of this subsection, the applicant may take any of the following actions:
- a. Revise and resubmit the application; or
  - b. Treat the action as a denial of the application and appeal the denial under Article 3 of Chapter 150B of the General Statutes.
- (7) Option; No Additional Fee. The submittal of a permit application certified by a professional engineer to be considered under this subsection shall be an option and shall not be required of any applicant. The Department shall not impose any additional fees for the receipt or processing of a permit application certified by a professional engineer.
- (i) Rules for Review of Applications Other Than Those Certified by a Professional Engineer. -- The Commission shall adopt rules governing the times of review for all permit applications submitted pursuant to this section other than those certified by a professional engineer pursuant to subsection (h) of this section. Those rules shall specify maximum times for, among other things, the following actions in reviewing the permit applications covered by this subsection:
- (1) Determining that the permit application is complete;
  - (2) Requesting additional information to determine completeness;
  - (3) Determining that additional information is needed to conduct a technical review of the application;
  - (4) Completing all technical review of the permit application;
  - (5) Holding and completing all public meetings and hearings required for the application;
  - (6) Completing the record from reviewing and acting on the application; and
  - (7) Taking final action on the permit, including granting or denying the application."

**Sec. 3.** The rule-making proceedings for the rules to be adopted pursuant to G.S. 143-215.108(h) and G.S. 143-215.108(i), as enacted by Section 2 of this act, shall be initiated as soon as possible after the effective

date of this act with the goal of making the permanent rules effective no later than 18 months after the ratification of this act.

**Sec. 4.** In order to evaluate the progress towards implementation of this act, including adoption of the rules required in Sections 2 of this act, the Department shall submit a report by 1 April 1996 to the Environmental Review Commission for consideration and any recommendations for further legislation to be considered by the 1996 Regular Session of the 1995 General Assembly.

**Sec. 5.** G.S. 143-215.3(a)(1b) reads as rewritten:

"(1b) The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing of an application for a permit under G.S. 143-215.1 of Article 21 and ~~G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter~~ may not exceed four hundred dollars (\$400.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter may not exceed five hundred dollars (\$500.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing a registration under Part 2A of this Article or Article 38 of this Chapter may not exceed fifty dollars (\$50.00) for any single registration. An additional fee of twenty percent (20%) of the registration processing fee may be assessed for a late registration under Article 38 of this Chapter. The fee for administering and compliance monitoring under G.S. 143-215.1 of Article 21 and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B shall be charged on an annual basis for each year of the permit term and may not exceed one thousand five hundred dollars (\$1,500) per year. Fees for processing all permits under Article 21A and all other sections of Articles 21 and 21B shall not exceed one hundred dollars (\$100.00) for any single permit. Notwithstanding any other provision of this subdivision, the total payment for fees required for all permits under this subsection for any single facility shall not exceed seven thousand five hundred dollars (\$7,500) per year, which amount shall include all application fees and fees for administration and compliance monitoring. A single facility is defined to be any contiguous area under one ownership and in which permitted activities occur. For all permits issued under these Articles where a fee schedule is not specified in the statutes, the Commission, or other commission specified by statute shall adopt a fee schedule in a rule following the procedures established by the Administrative Procedure Act. Such fee Fee schedules shall be established to reflect the size of the emission or discharge, the potential impact on the environment, the staff costs involved, relative costs of the issuance of new permits and the reissuance of existing permits, and shall include adequate safeguards to prevent unusual fee assessments which would result in serious economic burden on an individual applicant. A system shall be considered to allow consolidated annual

payments for persons with multiple permits. In its rulemaking to establish fee schedules, the Commission is also directed to consider a method of rewarding facilities which achieve full compliance with administrative and self-monitoring reporting requirements, and to consider, in those cases where the cost of renewal or amendment of a permit is less than for the original permit, a lower fee for such the renewal or amendment."

**Sec. 6.** Section 3 of this act and this section are effective upon ratification. The remainder of this act becomes effective 1 January 1996 and applies to an application for a new permit, a modification of an existing permit, or a reissuance or renewal of an existing permit filed on or after that date.

In the General Assembly read three times and ratified this the 26th day of July, 1995.

H.B. 952

## CHAPTER 485

### AN ACT TO ESTABLISH THE NORTH CAROLINA BRIDGE AUTHORITY.

*The General Assembly of North Carolina enacts:*

**Section 1.** Chapter 136 of the General Statutes is amended by adding a new Article to read:

#### "ARTICLE 6F.

#### "North Carolina Bridge Authority.

"§ 136-89.159. Bridge projects.

(a) The creation of the North Carolina Bridge Authority is necessitated by:

- (1) The high cost of constructing long bridges;
- (2) The need for providing better access to areas of a peninsula of the mainland where egress has been blocked by federal acquisition of property; and
- (3) The need for providing additional critically needed evacuation routes from the Outer Banks during hurricanes and in the event of other natural disasters.

(b) The North Carolina Bridge Authority shall construct, maintain, repair, and operate a bridge of more than two miles in length going from the mainland to a peninsula from which land egress is through property of the United States.

"§ 136-89.160. Funding for projects.

All expenses incurred in carrying out the provisions of this Article shall be payable solely from funds, including federal funds, that are now or may become available to the Authority in the future for projects. Any fees collected under this Article shall be credited to the Highway Trust Fund and used to offset the costs of building, maintaining, or operating the bridge and other related projects.

"§ 136-89.161. North Carolina Bridge Authority.

(a) There is created a body politic and corporate to be known as the 'North Carolina Bridge Authority'. The Authority is constituted a public



agency, and the exercise by the Authority of the powers conferred by this Article in the construction, operation, and maintenance of the bridge project shall be deemed and held to be the performance of an essential governmental function.

(b) The North Carolina Bridge Authority shall consist of eight members:

(1) The Secretary of Transportation.

(2) Three members shall be appointed by the Governor, one for a term expiring on July 1, 1996, one for a term expiring on July 1, 1997, and one for a term expiring on July 1, 1998. Each subsequent appointment shall be for a term of four years.

(3) Four members shall be appointed by the General Assembly, two upon the recommendation of the President Pro Tempore of the Senate and two upon the recommendation of the Speaker of the House of Representatives, in accordance with G.S. 120-121.

a. The President Pro Tempore of the Senate shall recommend the appointment of two members, one of whom shall serve a term expiring June 30, 1997, and one of whom shall serve a term expiring June 30, 1999. Each subsequent regular appointment shall be for a term of four years.

b. The Speaker of the House shall recommend the appointment of two members, one of whom shall serve a term expiring June 30, 1997, and one of whom shall serve a term expiring June 30, 1999. Each subsequent regular appointment shall be for a term of four years.

(c) The successor of each of the appointed members shall be appointed for a term of four years, but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term, and a member of the Authority shall be eligible for reappointment. Each appointed member of the Authority may be removed by the appointing authority for misfeasance, malfeasance, or willful neglect of duty. Each appointed member of the Authority before entering upon the member's duties shall take an oath to administer the duties of the office faithfully and impartially, and a record of each oath shall be filed in the Office of the Secretary of State.

(d) At its first meeting after July 1, 1995, and every two years thereafter, the Authority shall elect from its appointed membership a chair and a vice-chair. The Authority shall also elect a secretary who need not be a member of the Authority. The secretary shall serve as an officer at the pleasure of the Authority. Five members of the Authority shall constitute a quorum, and the affirmative vote of five members shall be necessary for any action taken by the Authority. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

(e) The appointed members of the Authority shall receive no salary for their services but shall be entitled to receive per diem and allowances in accordance with the provisions of G.S. 138-5.

(f) The Authority shall be located within the Department of Transportation for administrative purposes but shall exercise all of its powers independently of the Department of Transportation.

(g) The Authority shall adopt bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational and administrative matters as the Authority may determine.

(h) Upon completion of any bridge constructed pursuant to this Article, the Authority shall appoint an executive director, whose salary shall be fixed by the Authority, to serve at its pleasure. Prior to appointing an Executive Director, the Authority shall confer with the Governor regarding the proposed salary to be paid to the Executive Director. The Executive Director shall be responsible for the daily administration of bridges constructed, maintained, or operated pursuant to this Article.

" § 136-89.162. Powers of the Authority.

(a) The Authority shall have all of the powers necessary to execute the provisions of this Article which shall include at least the following powers:

- (1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.
- (2) To establish, purchase, construct, operate, and regulate bridges and to own, lease, sell, or manage real or personal property.
- (3) To charge and collect tolls and fees for the use of the bridges, for services rendered in the operation of the bridges, or to offset the costs of building the bridges. A toll shall not exceed ten dollars (\$10.00) and an annual fee for a single vehicle to use the bridge during a year shall not exceed five hundred dollars (\$500.00). The Authority shall report its schedule of tolls and fees to the Joint Legislative Transportation Oversight Committee.
- (4) To rent, lease, purchase, acquire, own, encumber, or dispose of real or personal property.
- (5) To establish, construct, purchase, maintain, equip, and operate any structure or facilities associated with a bridge.
- (6) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Authority.
- (7) To apply for, accept, and administer loans and grants of money from any federal agency, from the State or its political subdivisions, or from any other public or private sources available.
- (8) To adopt, alter, or repeal its own bylaws or rules implementing the provisions of this Article.
- (9) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants and employees as may be required in the judgment of the Authority and to fix and pay their compensation from funds available to the Authority.
- (10) To procure and maintain adequate insurance or otherwise provide for adequate protection to indemnify the Authority and its officers, directors, agents, employees, adjoining property owners, or the general public against loss or liability resulting from any act or omission by or on behalf of the Authority.
- (11) To receive and use appropriations from the State, including an appropriation from the proceeds of State general obligation bonds or notes.

(b) To execute the powers provided in subsection (a) of this section, the Authority shall determine its policies by majority vote of the members of the Authority present and voting, a quorum having been established.

" § 136-89.163. Taxation of property of Authority.

Property owned by the Authority is exempt from taxation in accordance with Article V, Section 2 of the North Carolina Constitution.

" § 136-89.164. Acquisition, disposition, or exchange of real property.

The Authority may acquire real property by purchase, negotiation, gift, or devise. When the Authority acquires real property owned by the State, the Secretary of the Department of Administration shall execute and deliver to the Authority a deed transferring fee simple title to the property to the Authority.

" § 136-89.165. Cooperation by other State agencies.

All State officers and agencies shall render the services to the Authority within their respective functions as may be requested by the Authority.

" § 136-89.166. Annual and quarterly reports.

The Authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor, the General Assembly, and the Department of Transportation. Each report shall be accompanied by an audit of its books and accounts. The costs of all audits, whether conducted by the State Auditor's staff or contracted with a private auditing firm, shall be paid from funds of the Authority.

The Authority shall submit quarterly reports to the Joint Legislative Transportation Oversight Committee. The reports shall summarize the Authority's activities during the quarter and contain any information about the Authority's activities that is requested by the Committee.

" § 136-89.167. Dissolution.

Whenever the Authority, by resolution, determines that the purposes for which the Authority was formed have been substantially fulfilled, the Authority may declare itself dissolved. On the effective date of the resolution, the title to all property owned by the Authority at the time of the dissolution shall vest in the State, and possession of the property shall be delivered to the State."

**Sec. 2.** The Joint Legislative Transportation Oversight Committee shall study the best method for funding the North Carolina Bridge Authority and the construction and maintenance of a bridge in Currituck County from the mainland to the Outer Banks near Corolla, and report its findings to the General Assembly on or before the first day of the 1996 Regular Session.

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of July, 1995.

*The General Assembly of North Carolina enacts:*

**Section 1.** The General Statutes are amended by adding a new Chapter to read as follows:

**"Chapter 33B.**

**"North Carolina Uniform Custodial Trust Act.**

**" § 33B-1. Definitions.**

**As used in this act:**

- (1) 'Adult' means an individual who is at least 21 years of age.**
- (2) 'Beneficiary' means an individual for whom property has been transferred to or held under a declaration of trust by a custodial trustee for the individual's use and benefit under this act.**
- (3) 'Guardian of the estate' means a guardian appointed for the purpose of managing the property, estate, and business affairs of a ward, or a person legally authorized to perform substantially the same functions. As used in this act the term 'guardian of the estate' includes a general guardian or guardian of the estate appointed under the provisions of Chapter 35A of the General Statutes.**
- (4) 'Court' means the clerk of superior court of this State.**
- (5) 'Custodial trust property' means an interest in property transferred to or held under a declaration of trust by a custodial trustee under this act and the income from and proceeds of that interest.**
- (6) 'Custodial trustee' means a person designated as trustee of a custodial trust under this act or a substitute or successor to the person designated.**
- (7) 'Guardian of the person' means a guardian appointed for the purpose of performing duties relating to the care, custody, and control of a ward, but not a person who is only a guardian ad litem. As used in this act the term 'guardian of the person' includes a general guardian or guardian of the person appointed under the provisions of Chapter 35A of the General Statutes.**
- (8) 'Incapacitated' means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, being under 21 years of age, or other disabling cause.**
- (9) 'Legal representative' means a personal representative or guardian of the estate.**
- (10) 'Member of the beneficiary's family' means a beneficiary's spouse, descendant, parent, grandparent, brother, sister, uncle or aunt, whether of the whole or half blood or by adoption.**
- (11) 'Person' means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.**
- (12) 'Personal representative' means an executor, administrator, or special administrator of a decedent's estate, a person legally**



authorized to perform substantially the same function, or a successor to any of them.

- (13) 'State' means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
- (14) 'Transferor' means a person who creates a custodial trust by transfer or declaration.
- (15) 'Trust company' means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers in North Carolina.
- (16) 'General guardian' means a guardian of both the estate and the person.

" § 33B-2. Custodial trust: general.

(a) A person may create a custodial trust of property by a written transfer of the property to a trust company or an adult other than the transferor executed in any lawful manner, naming as beneficiary an individual, who may be the transferor, in which the transferee is designated, in substance, as custodial trustee under the North Carolina Uniform Custodial Trust Act. A transfer is executed in a lawful manner if the formalities, if any, of the transfer of the particular property necessary under general principles of law are satisfied.

(b) An adult may create a custodial trust of property by a written declaration which names as beneficiary an individual other than the declarant. The declaration shall be evidenced by registration of the property or by other instrument of declaration executed in any lawful manner, describing the property and designating the declarant, in substance, as custodial trustee under the North Carolina Uniform Custodial Trust Act. A registration or other declaration of trust for the sole benefit of the declarant is not a custodial trust under this act. A registration or declaration is executed in a lawful manner if the formalities, if any, of the transfer of the beneficial interest in the particular property under general principles of law are satisfied.

(c) Title to custodial trust property is in the custodial trustee, and the beneficial interest is in the beneficiary.

(d) Except as provided in subsection (e) of this section, a transferor may not terminate a custodial trust.

(e) The beneficiary, if not incapacitated, or the guardian of the estate of an incapacitated beneficiary, may terminate a custodial trust by delivering to the custodial trustee a writing signed by the beneficiary or guardian of the estate declaring the termination. If not previously terminated, the custodial trust terminates on the death of the beneficiary.

(f) Any person may augment existing custodial trust property by the addition of other property pursuant to a written instrument satisfying the requirements of subsections (a) or (b) of this section.

(g) The transferor may designate, or authorize the designation of, a successor custodial trustee in the trust instrument.

(h) This act does not displace or restrict other means of creating trusts. A trust, the terms of which do not conform to this act, may be enforceable according to its terms under the law.



" § 33B-3. Custodial trust to begin in the future.

(a) A person may create a custodial trust to begin in the future by designating the transferee in substance 'as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform Custodial Trust Act'. A designation under this section may be made in:

- (1) A will;
- (2) A trust;
- (3) An insurance policy;
- (4) A deed;
- (5) A payable-on-death account;
- (6) An instrument exercising a power of appointment, provided that the donor of the power has not expressly prohibited the exercise of the power in favor of a custodial trustee, and provided further that the beneficiary of the custodial trust is a permissible object of the power, although the custodial trustee need not be a permissible object of the power; or
- (7) A writing designating a beneficiary of contractual rights, including but not limited to rights under a pension or profit sharing plan, which is registered with or delivered to the fiduciary, payor, issuer, or obligor of the contractual right.

(b) Persons may be designated as substitute or successor custodial trustees to whom the property must be paid or transferred in the order named if the preceding designated custodial trustee is unable or unwilling to serve.

" § 33B-4. Form and effect of receipt and acceptance by custodial trustee; jurisdiction.

(a) Obligations of a custodial trustee, including the obligation to follow directions of the beneficiary, arise under this act upon the custodial trustee's acceptance, express or implied, of the custodial trust property.

(b) The custodial trustee's acceptance may be evidenced by a writing stating in substance:

'CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

I, ..... (name of custodial trustee) acknowledge receipt of the custodial trust property described below or in the attached instrument and accept the custodial trust as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform Custodial Trust Act. I undertake to administer and distribute the custodial trust property pursuant to the North Carolina Uniform Custodial Trust Act. My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is, or becomes incapacitated. The custodial trust property consists of .....

Dated: .....

.....  
(Signature of Custodial Trustee)'

(c) Upon accepting custodial trust property, a person designated as custodial trustee under this act is subject to personal jurisdiction in this State with respect to any matter relating to the custodial trust.

" § 33B-5. Transfer to custodial trustee by fiduciary or obligor; facility of payment.

(a) A person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a guardian of the estate may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds twenty thousand dollars (\$20,000), the transfer is not effective unless authorized by the court.

(b) A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this section.

(c) This section shall not apply when the disposition of the property has been directed by an instrument designating a custodial trustee pursuant to G.S. 33B-3.

"§ 33B-6. Single beneficiaries; separate custodial trusts.

(a) Beneficial interests in a custodial trust may not be created for multiple beneficiaries.

(b) All custodial trust property held under this act by the same custodial trustee for the use and benefit of a single beneficiary may be administered as a single custodial trust.

"§ 33B-7. General duties of custodial trustee.

(a) If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

(b) If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property.

If the beneficiary is incapacitated or the beneficiary has capacity but has not given direction, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor.

If a custodial trustee has a special skill or expertise or is named custodial trustee on the basis of representation of a special skill or expertise, the custodial trustee shall observe the standard of care expected of one with that skill or expertise.

(c) Subject to subsection (b) of this section, a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

(d) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control, separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is adequately identified as such if an appropriate instrument so identifying the property is recorded in the name of the custodial trustee, designated in substance 'as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform Custodial Trust Act'. Custodial trust property subject to registration is so identified if it is registered, or held in an account in the name of the custodial trustee,

designated in substance 'as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform Custodial Trust Act'.

(e) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

(f) Unless the durable power of attorney specifically provides otherwise, the exercise of the durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the administration or distribution of a custodial trust.

*"§ 33B-8. General powers of custodial trustee.*

(a) A custodial trustee, acting in a fiduciary capacity, has all the rights and powers over custodial trust property which an unmarried adult owner has over individually owned property, but a custodial trustee may exercise those rights and powers in a fiduciary capacity only.

(b) This section does not relieve a custodial trustee from liability for a violation of G.S. 33B-7.

*"§ 33B-9. Use of custodial trust property.*

(a) A custodial trustee shall pay to the beneficiary or expend for the beneficiary's use and benefit so much or all of the custodial trust property as the beneficiary while not incapacitated may direct from time to time.

(b) If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of the beneficiary and the spouse and children, and other dependents of the beneficiary. Expenditures may be made in the manner, when, and to the extent that the custodial trustee determines suitable and proper, without court order and without regard to other support, income, or property of the beneficiary.

(c) A custodial trustee may establish checking, savings, or other similar accounts of reasonable amounts from which either the custodial trustee or the beneficiary may withdraw funds or against which either may draw checks. Funds withdrawn from, or checks written against, the account of the beneficiary are distributions of custodial trust property by the custodial trustee to the beneficiary.

*"§ 33B-10. Determination of incapacity; effect.*

(a) The custodial trustee shall administer the custodial trust as for an incapacitated beneficiary if (i) the custodial trust was created under G.S. 33B-5, (ii) the transferor has so directed in the instrument creating the custodial trust, (iii) a determination that a beneficiary is an incompetent adult has been made under the provisions of Chapter 35A, including a determination of limited incompetence under the provisions of G.S. 35A-1112(d), unless the court provided otherwise, or (iv) the custodial trustee has determined that the beneficiary is incapacitated under subsection (b) of this section.

(b) A custodial trustee may determine that the beneficiary is incapacitated in reliance upon (i) previous direction or authority given by the beneficiary while not incapacitated, including direction or authority pursuant to a durable power of attorney, (ii) the certificate of the beneficiary's physician,

(iii) authority given to the custodial trustee in the instrument creating the trust to determine the incapacity of the beneficiary after the creation of the custodial trust, or (iv) other reasonable evidence.

(c) If a custodial trustee for an incapacitated beneficiary determines that the beneficiary's incapacity has ceased, or that circumstances concerning the beneficiary's ability to manage property and business affairs have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary, the custodial trustee may administer the trust as for a beneficiary who is not incapacitated.

(d) Regardless of whether any determination of incapacity under subsection (b) of this section has or has not been made, the beneficiary, the custodial trustee, or other person interested in the custodial trust property or the welfare of the beneficiary, may petition under the procedures of Chapter 35A for a determination by the court whether the beneficiary is or continues to be incapacitated as defined in G.S. 33B-1(8). A determination of incapacity does not require appointment of a guardian of the estate unless in the discretion of the court such appointment is otherwise warranted.

(e) Incapacity of a beneficiary does not terminate (i) the custodial trust, (ii) any designation of a successor custodial trustee, (iii) rights or powers of the custodial trustee, or (iv) any immunities of third persons acting on instructions of the custodial trustee.

(f) A custodial trustee shall not be liable for any determinations authorized by this section regarding the capacity or incapacity of the beneficiary made in good faith.

" § 33B-11. Third-party transactions.

A third person in good faith and without a court order may act on instructions of, or otherwise deal with, a person purporting to make a transfer as, or to act in the capacity of, a custodial trustee. In the absence of actual knowledge to the contrary, the third person is not responsible for determining:

- (1) The validity of the purported custodial trustee's designation;
- (2) The propriety of, or the authority under this act for, any action of the purported custodial trustee;
- (3) The validity or propriety of an instrument executed or instruction given pursuant to this act either by the person purporting to make a transfer or declaration or by the purported custodial trustee; or
- (4) The propriety of the application of property vested in the purported custodial trustee.

" § 33B-12. Liability to the third person.

(a) A claim based on (i) a contract entered into by a custodial trustee acting in a fiduciary capacity, (ii) an obligation arising from the ownership or control of custodial trust property, (iii) a tort committed in the course of administering the custodial trust, may be asserted by a third person against the custodial trust property by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

(b) A custodial trustee may be held personally liable to a third person:



- (1) On a contract entered into in a fiduciary capacity if the custodial trustee fails to reveal that capacity or to identify the custodial trust in the contract; or
- (2) For an obligation arising from control of custodial trust property or for a tort committed in the course of the administration of the custodial trust if the custodial trustee is personally at fault.

(c) A beneficiary is not personally liable to a third person for an obligation arising from beneficial ownership of custodial trust property or for a tort committed in the course of administration of the custodial trust unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

(d) Subsections (b) and (c) of this section do not preclude actions or proceedings to establish liability of the custodial trustee or beneficiary as owner or possessor of the custodial trust property to the extent that person is protected as the insured by liability insurance.

"§ 33B-13. Declination, resignation, incapacity, death, or removal of custodial trustee; designation of successor custodial trustee.

(a) Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve by notifying the person who made the designation, the transferor, or the transferor's legal representative. In such case, the transferor or the transferor's legal representative may designate a substitute custodial trustee. If the custodial trust is being created under G.S. 33B-3, the substitute custodial trustee designated under G.S. 33B-3 becomes the custodial trustee, or, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee pursuant to G.S. 33B-3.

(b) A custodial trustee who has accepted the custodial trust property may resign by (i) delivering written notice to a successor custodial trustee, if any, the beneficiary, and, if the beneficiary is incapacitated, to the beneficiary's guardian of the estate, if any, and (ii) transferring and, where appropriate, registering or recording an instrument relating to the custodial trust property in the name of the successor custodial trustee identified under subsection (c) of this section.

(c) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated under G.S. 33B-2 or G.S. 33B-3 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee; if the beneficiary fails to act within 90 days, the resigning custodial trustee may designate a successor custodial trustee. If there is no effective provision for a successor custodial trustee and if the beneficiary is incapacitated, the beneficiary's guardian of the estate becomes successor custodial trustee. If the beneficiary does not have a guardian of the estate or the guardian of the estate fails to act as custodial trustee, the resigning custodial trustee may designate a successor custodial trustee.

(d) If a successor custodial trustee is not designated pursuant to subsection (c) of this section, the following persons may in the order listed petition the court to designate a successor custodial trustee: the transferor, the legal representative of the transferor, the legal representative of the custodial trustee, the general guardian of the beneficiary, the guardian of the



estate of the beneficiary, an adult member of the beneficiary's family, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary.

(e) A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee shall put the custodial trust property and records in the possession and control of the successor custodial trustee as soon as practical. The successor custodial trustee shall enforce the obligation to deliver custodial trust property and records.

(f) A beneficiary, the beneficiary's guardian of the estate, an adult member of the beneficiary's family, a guardian of the person of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court (i) to remove the custodial trustee for cause and to designate a successor custodial trustee, (ii) to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties, or (iii) for other appropriate relief.

" § 33B-14. Expenses, compensation, and bond of custodial trustee.

Except as otherwise provided in the instrument creating the custodial trust, in an agreement with the beneficiary, or by court order, a custodial trustee:

- (1) Is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services;
- (2) May charge, no later than six months after the end of each calendar year, a reasonable compensation for fiduciary services performed during that year; and
- (3) Need not furnish a bond or other security for the faithful performance of fiduciary duties.

" § 33B-15. Reporting and accounting by custodial trustee; determination of liability of custodial trustee.

(a) Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement that the custodial trust property is held pursuant to this act and describing the custodial trust property. The custodial trustee shall thereafter provide a written statement of the administration of the custodial trust property (i) once each year, (ii) upon request at reasonable times by the beneficiary or the beneficiary's legal representative, (iii) upon resignation or removal of the custodial trustee, and (iv) upon termination of the custodial trust. The statements must be provided to the beneficiary or to the beneficiary's legal representative. Upon termination of the beneficiary's interest, the custodial trustee shall furnish a statement to the person to whom the custodial trust property is to be delivered.

(b) A beneficiary, the beneficiary's legal representative, an adult member of the beneficiary's family, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative.

(c) A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee or the legal representative of a predecessor custodial trustee.

(d) In an action or proceeding under this act or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee's legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of annual or final accounts.

(e) If a custodial trustee is removed, the court shall require an accounting and order delivery of the custodial trust property and records to the successor custodial trustee and the execution of all instruments required for transfer of the custodial trust property.

(f) On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may issue instructions to the custodial trustee or review the propriety of the acts of a custodial trustee or the reasonableness of compensation determined by the custodial trustee or others.

" § 33B-16. Limitations of action against custodial trustee.

(a) Except as provided in subsections (b) and (c) of this section, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered, or the legal representative of an incapacitated or deceased beneficiary or payee:

(1) Who has received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within two years after receipt of the final account or statement; or

(2) Who has not received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within three years after the termination of the custodial trust.

(b) Except as provided in subsection (c) of this section, a claim for relief to recover from a custodial trustee for fraud, misrepresentation, or concealment is barred unless an action or proceeding to assert the claim is commenced within five years after the termination of the custodial trust.

(c) A claim for relief is not barred by this section if the claimant:

(1) Is a minor, until the earlier of two years after the claimant becomes an adult or dies;

(2) Is an incapacitated adult, until the earliest of two years after (i) the appointment of a guardian of the estate, (ii) the removal of the incapacity, or (iii) the death of the claimant; or

(3) Was an adult, now deceased, who was not incapacitated, until two years after the claimant's death if the claim was not barred by adjudication, consent, or limitation prior to the claimant's death.

" § 33B-17. Distribution on termination.

(a) Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

(1) To the beneficiary, if not incapacitated or deceased;

(2) To the guardian of the estate or other recipient designated by the court for an incapacitated beneficiary; or

(3) Upon the beneficiary's death, in the following order:

a. As last directed in a writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary;

b. As designated in the instrument creating the custodial trust; or

c. To the estate of the deceased beneficiary.

(b) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

(c) Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

(d) The writing described in G.S. 33B-17(a)(3)a. or the instrument described in G.S. 33B-17(a)(3)b. must also be signed by at least two witnesses, neither of whom is the custodial trustee or the distributee of the custodial trust property, and be acknowledged by the beneficiary or transferor before an individual authorized to administer oaths or take acknowledgements. Failure to comply with the witness or acknowledgement requirement shall not affect the validity of the custodial trust during the life of the beneficiary, but shall invalidate only the direction or designation of the distributee on termination of the custodial trust under G.S. 33B-17(a)(3)a. or G.S. 33B-17(a)(3)b., and upon termination of the custodial trust the custodial trustee shall transfer the unexpended custodial trust property according to the remaining provisions of this section.

"§ 33B-18. Methods and forms of creating custodial trusts.

(a) If a transaction (including a declaration with respect to or a transfer of specific property) otherwise satisfies applicable law, the criteria of G.S. 33B-2 are satisfied by:

(1) The execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

'TRANSFER UNDER THE NORTH CAROLINA  
UNIFORM CUSTODIAL TRUST ACT

I, ..... (name of transferor or name and representative capacity if a fiduciary), transfer to ..... (name of trustee other than transferor), as custodial trustee for ..... (name of beneficiary) as beneficiary and ..... as distributee on termination of the trust in absence of direction by the beneficiary under the North Carolina Uniform Custodial Trust Act, the following:  
(insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: .....

.....(Seal)

.....(Witness)

Signature

.....(Witness)

STATE OF ..... COUNTY OF .....

On this ..... day of ....., ....., personally appeared before me, the said named ..... to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires .....

.....  
(Signature of Notary Public)  
Notary Public (Official Seal);

or

- (2) The execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

'DECLARATION OF TRUST UNDER THE NORTH CAROLINA  
UNIFORM CUSTODIAL TRUST ACT

I, ..... (name of owner of property,) declare that henceforth I hold as custodial trustee for ..... (name of beneficiary other than transferor) as beneficiary and ..... as distributee on termination of the trust in absence of direction by the beneficiary under the North Carolina Uniform Custodial Trust Act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: .....

.....(Seal)

.....(Witness)

Signature

.....(Witness)

STATE OF ..... COUNTY OF .....

On this ..... day of ....., ....., personally appeared before me, the said named ..... to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires .....

.....  
(Signature of Notary Public)  
Notary Public (Official Seal);

(b) Any customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including, but not limited to, any of the following:

- (1) Registration of a security in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance 'as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform Custodial Trust Act';
- (2) Delivery of a certificated security, or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in subsection (a)(1);
- (3) Payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance 'as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform Custodial Trust Act';
- (4) Registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance 'as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform Custodial Trust Act';
- (5) Delivery of a written assignment to an adult other than the transferor or to a trust company designated in the assignment in substance by the words 'as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform Custodial Trust Act';
- (6) Irrevocable exercise of a power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power, or the donee who holds the power if the beneficiary is other than the donee, designated in the appointment in substance 'as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform Custodial Trust Act';
- (7) Delivery of a written notification or assignment of a right to future payment under a contract to an obligor which transfers the right under the contract to a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in the notification or assignment in substance 'as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform Custodial Trust Act';
- (8) Execution and delivery of a conveyance of an interest in real property in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance 'as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform Custodial Trust Act';



- (9) Issuance of a certificate of title by an agency of a state or of the United States which evidences title to tangible personal property:
- a. Issued in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance 'as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform Custodial Trust Act'; or
  - b. Delivered to a trust company or an adult other than the transferor or endorsed by the transferor to that person, designated in substance 'as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform Custodial Trust Act'; or
- (10) Execution and delivery of an instrument of gift to a trust company or an adult other than the transferor, designated in substance 'as custodial trustee for ..... (name of beneficiary) under the North Carolina Uniform Custodial Trust Act'.

" § 33B-19. Applicable law.

(a) This act applies to a transfer or declaration creating a custodial trust that refers to this act if, at the time of the transfer or declaration, the transferor, beneficiary, or custodial trustee is a resident of or has its principal place of business in this State or the custodial trust property is located in this State. The custodial trust remains subject to this act despite a later change in residence or principal place of business of the transferor, beneficiary, or custodial trustee, or removal of the custodial trust property from this State.

(b) A transfer made pursuant to an act of another state substantially similar to this act is governed by the law of that state and may be enforced in this State.

" § 33B-20. Uniformity of application and construction.

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

" § 33B-21. Short title.

This act may be cited as the 'North Carolina Uniform Custodial Trust Act'.

" § 33B-22. Limitation on value of custodial trust property.

Transfers or declarations of property to the corpus of a custodial trust under this act shall not exceed in the aggregate one hundred thousand dollars (\$100,000) in value, exclusive of the value of the transferor's or declarant's personal residence. This limitation shall not apply to any appreciation in the value of the corpus held in the custodial trust. A good faith violation of this section shall not invalidate a custodial trust."

**Sec. 2.** G.S. 32A-1 as amended by Chapter 331 of the 1995 Session Laws, Senate Bill 724 reads as rewritten:

" § 32A-1. Statutory Short Form of General Power of Attorney.

The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this Chapter.

**\*NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.**

State of .....

County of .....

I ....., appoint ..... to be my attorney-in-fact, to act in my name in any way which I could act for myself, with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General Statutes. (DIRECTIONS: Initial the line opposite any one or more of the subdivisions as to which the principal desires to give the attorney-in-fact authority.)

- (1) Real property transactions \_\_\_\_\_
- (2) Personal property transactions \_\_\_\_\_
- (3) Bond, share, stock, securities and commodity transactions \_\_\_\_\_
- (4) Banking transactions \_\_\_\_\_
- (5) Safe deposits \_\_\_\_\_
- (6) Business operating transactions \_\_\_\_\_
- (7) Insurance transactions \_\_\_\_\_
- (8) Estate transactions \_\_\_\_\_
- (9) Personal relationships and affairs \_\_\_\_\_
- (10) Social security and unemployment \_\_\_\_\_
- (11) Benefits from military service \_\_\_\_\_
- (12) Tax matters \_\_\_\_\_
- (13) Employment of agents \_\_\_\_\_
- (14) Gifts to charities, and to individuals other than the attorney-in-fact \_\_\_\_\_
- (15) Gifts to the named attorney-in-fact \_\_\_\_\_

(If power of substitution and revocation is to be given, add: "I also give to such person full power to appoint another to act as my attorney-in-fact and full power to revoke such appointment.")

(If period of power of attorney is to be limited, add: "This power terminates ....., ..")

(If power of attorney is to be a durable power of attorney under the provision of Article 2 of Chapter 32A and is to continue in effect after the incapacity or mental incompetence of the principal, add: "This power of attorney shall not be affected by my subsequent incapacity or mental incompetence.")

(If power of attorney is to take effect only after the incapacity or mental incompetence of the principal, add: "This power of attorney shall become effective after I become incapacitated or mentally incompetent.")

(If power of attorney is to be effective to terminate or direct the administration of a custodial trust created under the Uniform Custodial Trust Act, add: "In the event of my subsequent

incapacity or mental incompetence, the attorney-in-fact of this power of attorney shall have the power to terminate or to direct the administration of any custodial trust of which I am the beneficiary.")

(If power of attorney is to be effective to determine whether a beneficiary under the Uniform Custodial Trust Act is incapacitated or ceases to be incapacitated, add: "The attorney-in-fact of this power of attorney shall have the power to determine whether I am incapacitated or whether my incapacity has ceased for the purposes of any custodial trust of which I am the beneficiary.")

Dated .....

.....(Seal)

Signature

STATE OF ..... COUNTY OF .....

On this ..... day of ..... personally appeared before me, the said named ..... to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires .....

.....

(Signature of Notary Public)

Notary Public (Official Seal)''

**Sec. 3.** The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comments to the Uniform Custodial Trust Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

**Sec. 4.** This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 26th day of July, 1995.

S.B. 865

## CHAPTER 487

AN ACT TO AMEND THE STATE LAWS REGARDING THE PURCHASE OF A HANDGUN TO CONFORM TO THE REQUIREMENTS OF THE "BRADY HANDGUN VIOLENCE PREVENTION ACT".

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 14-403 reads as rewritten:

"§ 14-403. Permit issued by sheriff; form of ~~permit~~, permit; expiration of permit.

The sheriffs of any and all counties of this State ~~are hereby authorized and directed to shall~~ issue to any person, firm, or corporation in any such county a license or permit to purchase or receive any weapon mentioned in this Article from any person, firm, or corporation offering to sell or dispose of the ~~same, which said~~ weapon. The license or permit shall expire five

years from the date of issuance. The license or permit shall be in the following form, to wit: form:

North Carolina,

..... County.

I, ....., Sheriff of said County, do hereby certify that I have conducted a criminal background check of the applicant, ..... whose place of residence is .....in .....(or) in....Township, ..... County, North Carolina, and have received no information to indicate that it would be a violation of State or federal law for the applicant to purchase, transfer, receive, or possess a handgun. The applicant has further ~~having this day~~ satisfied me as to his, her (or) their good moral ~~character, character.~~ Therefore, a license or permit is ~~therefore hereby given said~~ issued to .....to purchase one pistol from any person, firm or corporation authorized to dispose of the same.

This license or permit expires five years from its date of issuance.

This .....day of ....., 19 .....

.....  
Sheriff."

**Sec. 2.** G.S. 14-404 reads as rewritten:

"§ 14-404. *Issuance or refusal of permit; appeal from refusal; grounds for refusal; sheriff's fee.*

(a) Upon application, the sheriff shall issue ~~such~~ the license or permit to a resident of that county unless the purpose of the permit is for collecting, in which case a sheriff can issue a permit to a nonresident when the sheriff has done all of the following:

(1) Verified by a criminal history background investigation that it is not a violation of State or federal law for the applicant to purchase, transfer, receive, or possess a handgun. The sheriff shall determine the criminal history of any applicant by accessing computerized criminal history records as maintained by the State Bureau of Investigation and the Federal Bureau of Investigation, by conducting a national criminal history records check, and by conducting a criminal history check through the Administrative Office of the Courts.

(2) ~~shall have fully~~ Fully satisfied himself or herself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant therefor, and that such person, firm, or corporation applicant.

(3) Fully satisfied himself or herself that the applicant desires the possession of the weapon mentioned for (i) the protection of the home, business, person, family or property, (ii) target shooting, (iii) collecting, or (iv) hunting.

(b) If ~~said~~ the sheriff ~~shall~~ is not ~~so~~ fully satisfied, ~~he~~ the sheriff may, for good cause shown, decline to issue ~~said~~ the license or permit and shall provide to ~~said~~ the applicant within seven days of ~~such~~ the refusal a written statement of the reason(s) for ~~such~~ the refusal. An appeal from ~~such~~ the refusal shall lie by way of petition to the chief judge of the district court for the district in which the application was filed. The determination by the

court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal, and shall be final.

(c) A permit may not be issued to the following persons:

- (1) ~~(i) one~~ One who is under an indictment or information for or has been convicted in any state, or in any court of the United States, of a felony (other than an offense pertaining to antitrust violations, unfair trade practices, or restraints of trade), ~~except that if a person has been convicted and later pardoned or is not prohibited from purchasing a firearm under the Felony Firearms Act (Article 54A of this Chapter), he may obtain a permit; trade).~~ However, a person who has been convicted of a felony in a court of any state or in a court of the United States and who is later pardoned may obtain a permit, if the purchase or receipt of a pistol or crossbow permitted in this Article does not violate a condition of the pardon.
- (2) ~~(ii) one~~ One who is a fugitive from justice; justice.
- (3) ~~(iii) one~~ One who is an unlawful user of or addicted to marijuana or any depressant, stimulant, or narcotic drug (as defined in 21 U.S.C. section 802; 802).
- (4) ~~(iv) one~~ One who has been adjudicated mentally incompetent ~~on the ground of mental illness~~ or has been committed to any mental institution.
- (5) One who is an alien illegally or unlawfully in the United States.
- (6) One who has been discharged from the armed forces under dishonorable conditions.
- (7) One who, having been a citizen of the United States, has renounced his or her citizenship.
- (8) One who is subject to a court order that:
  - a. Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;
  - b. Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner of the person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
  - c. Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

(d) ~~Provided, that nothing~~ Nothing in this Article shall apply to officers authorized by law to carry firearms if ~~such~~ the officers identify themselves to the vendor or donor as being officers authorized by law to carry firearms and state that the purpose for the purchase of the firearms is directly related to the law officers' official duties.

(e) The sheriff shall charge for ~~his~~ the sheriff's services upon issuing ~~such~~ the license or permit a fee of five dollars (\$5.00).



(f) Each applicant for ~~any such~~ a license or permit shall be informed by ~~said~~ the sheriff within 30 days of the date of ~~such~~ the application whether ~~such~~ the license or permit will be granted or denied and, if granted, ~~such~~ the license or permit shall be immediately issued to ~~said~~ the applicant."

Sec. 3. G.S. 14-415.1 reads as rewritten:

"§ 14-415.1. *Possession of firearms, etc., by felon prohibited.*

(a) It shall be unlawful for any person who has been convicted of ~~any crime set out in subsection (b) of this section~~ a felony to purchase, own, possess, or have in his custody, care, or control any handgun or other firearm with a barrel length of less than 18 inches or an overall length of less than 26 inches, or any weapon of mass death and destruction as defined in G.S. 14-288.8(c), ~~within five years from the date of such conviction, or the unconditional discharge from a correctional institution, or termination of a suspended sentence, probation, or parole upon such conviction, whichever is later, 14-288.8(c).~~

Every person violating the provisions of this section shall be punished as a Class H felon.

Nothing in this subsection would prohibit the right of any person to have possession of a firearm within his own home or on his lawful place of business.

(b) Prior convictions which cause disqualification under this section shall only include:

- (1) ~~Felonious violations of Articles 3, 4, 6, 7A, 8, 10, 13, 14, 15, 17, 30, 33, 36, 36A, 52A, or 53 of Chapter 14 of the General Statutes, or of Article 5 of Chapter 90 of the General Statutes; Felony convictions in North Carolina that occur before, on, or after December 1, 1995; and~~
- (2) ~~Common law robbery and common law maim; and~~
- (3) ~~Violations of criminal laws of other states or of the United States that occur before, on, or after December 1, 1995, and that are substantially similar to the crimes covered in subdivisions (1) and (2) subdivision (1) which are punishable where committed by imprisonment for a term exceeding two years, one year.~~

When a person is charged under this section, records of prior convictions of any offense, whether in the courts of this State, or in the courts of any other state or of the United States, shall be admissible in evidence for the purpose of proving a violation of this section. The term 'conviction' is defined as a final judgment in any case in which felony punishment, or imprisonment for a term exceeding ~~two years, one year~~, as the case may be, is permissible, without regard to the plea entered or to the sentence imposed. A judgment of a conviction of the defendant or a plea of guilty by the defendant to such an offense certified to a superior court of this State from the custodian of records of any state or federal court under the same name as that by which the defendant is charged shall be prima facie evidence that the identity of such person is the same as the defendant so charged and shall be prima facie evidence of the facts so certified.

(c) The indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section. An indictment which

charges the person with violation of this section must set forth the date that the prior offense was committed, the type of offense and the penalty therefor, and the date that the defendant was convicted or plead guilty to such offense, the identity of the court in which the conviction or plea of guilty took place and the verdict and judgment rendered therein."

**Sec. 4.** Article 53 of Chapter 14 of the General Statutes is repealed.

**Sec. 5.** This act becomes effective December 1, 1995, and applies to permits or licenses applied for on or after that date. This act shall expire if the instant criminal history records check system as set out in House Bill 919, 1995 Regular Session, is enacted and is implemented by the General Assembly.

In the General Assembly read three times and ratified this the 26th day of July, 1995.

H.B. 897

## CHAPTER 488

**AN ACT TO APPOINT PERSONS TO PUBLIC OFFICE UPON THE RECOMMENDATION OF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES; AND TO INCREASE THE NUMBER OF GENERAL ASSEMBLY APPOINTEES TO THE WESTERN NORTH CAROLINA REGIONAL ECONOMIC DEVELOPMENT COMMISSION.**

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments upon the recommendation of the Speaker of the House of Representatives; and

Whereas, the Speaker of the House of Representatives has made recommendations; Now, therefore,

*The General Assembly of North Carolina enacts:*

**Section 1.** Richard Koerber of Henderson County is appointed to the Acupuncture Licensing Board for a term expiring June 30, 1997.

**Sec. 2.** J. D. Teachey, Jr. of Duplin County, Zeno Radcliffe, III of Beaufort County, and Gary Hyatt of Mitchell County are appointed to the North Carolina Agricultural Finance Authority for terms expiring June 30, 1998.

**Sec. 3.** Sylvania Wilkerson of Wayne County is appointed to the Alarm Systems Licensing Board for a term expiring June 30, 1998.

**Sec. 4.** Frank H. Dunn, Jr. of Mecklenburg County is appointed to the State Banking Commission for a term expiring June 30, 1999.

**Sec. 5.** Jerri Howell of Robeson County (nonprovider) and Sharon Decker of Gaston County (nonprofit provider) are appointed to the Child Day-Care Commission for terms expiring June 30, 1997.

**Sec. 6.** Dr. John T. Tierney of Moore County is appointed to the State Board of Chiropractic Examiners for a term expiring June 30, 1997.

**Sec. 7.** James Ray Smith of Guilford County is appointed to the State Board of Cosmetic Art Examiners for a term expiring June 30, 1997.

**Sec. 8.** Louis Pippin of Wake County is appointed to the Crime Victims Compensation Commission for a term expiring June 30, 1999.

**Sec. 9.** Bill Anderson of Wilkes County is appointed to the North Carolina Criminal Justice Education and Training Standards Commission for a term expiring June 30, 1997.

**Sec. 12.** Carla DuPuy of Mecklenburg County and Doug Boykin of Pender County are appointed to the Environmental Management Commission for terms expiring June 30, 1997.

**Sec. 13.** Philip Spry of Guilford County is appointed to the Advisory Committee on Family-Centered Services for a term expiring June 30, 1999.

**Sec. 14.** Bennie Scarbro of Yadkin County is appointed to the State Fire and Rescue Commission for a term beginning October 1, 1995, and expiring September 30, 1998.

**Sec. 15.** Bob Everett of Halifax County is appointed to the Genetic Engineering Review Board for a term expiring June 30, 1998.

**Sec. 16.** Seddon Goode, Jr. of Mecklenburg County and J. Gregory Poole, Jr. of Wake County are appointed to the North Carolina Global TransPark Authority Board of Directors for terms expiring June 30, 1999.

**Sec. 17.** William T. Boyd of Randolph County (licensed real estate broker), Donald B. Barnes of Wayne County (at large), James William Oglesby of Buncombe County (at large), and Todd Houser of Mecklenburg County (mortgage servicing institution) are appointed to the Board of Directors of the North Carolina Housing Finance Agency for terms expiring June 30, 1997.

**Sec. 18.** Ray Little Turtle of Robeson County is appointed to the North Carolina State Commission on Indian Affairs for a term expiring June 30, 1997.

**Sec. 19.** Keith Clark of Moore County is appointed to the Information Resource Management Commission for a term expiring June 30, 1999.

**Sec. 20.** Bob McLester of Richmond County and Constance Walker of Durham County are appointed to the North Carolina Low-Level Radioactive Waste Management Authority for terms expiring June 30, 1999.

**Sec. 21.** Laura J. Thomas of Mecklenburg County and Terri Nunn of Forsyth County are appointed to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services for terms expiring June 30, 1997.

**Sec. 22.** Edmond Buckman, Sr. of Beaufort County and G.B. Warner of Hyde County are appointed to the Northeastern North Carolina Regional Economic Development Commission for terms expiring June 30, 1999.

**Sec. 23.** Cynthia R. Morgan of Moore County is appointed to the North Carolina Center for Nursing Board of Directors for a term expiring June 30, 1998.

**Sec. 24.** Donna White of Johnston County is appointed to the North Carolina Nursing Scholars Commission for a term expiring June 30, 1997.

**Sec. 25.** William B. Morris of Wake County (physical disability), James H. Wells of Guilford County (developmental disability), Max V. Krebs of Moore County (mental illness), Laurie M. Collins of Forsyth County (at large), Jodi Kopalla of Wake County (at large), Pat Clapp (mental retardation), and Sharon Plain of Onslow County (at large) are appointed to the Governor's Advocacy Council for Persons with Disabilities for terms expiring June 30, 1997.

**Sec. 26.** Steve Williams of Forsyth County (owner/operator of a convenience store), Neb King of Person County (motor fuel service station dealer), and George Robert Luckadoo of Rutherford County (mediation of groundwater contamination) are appointed to the North Carolina Petroleum Underground Storage Tank Funds Council for terms expiring June 30, 1997.

**Sec. 27.** Henry Kluttz of Rowan County is appointed to the North Carolina Principal Fellows Commission for a term expiring June 30, 1999.

**Sec. 28.** Melvin Gregory Scott of Forsyth County is appointed to the Private Protective Services Board for a term expiring June 30, 1998.

**Sec. 29.** James R. Vosburgh of Beaufort County is appointed to the Property Tax Commission for a term expiring June 30, 1997.

**Sec. 30.** James L. Bichsel of Guilford County is appointed to the Public Officers and Employees Liability Insurance Commission for a term expiring June 30, 1999.

**Sec. 31.** Ralph Burroughs of Forsyth County and D.K. McLaughlin of Guilford County are appointed to the Board of Public Telecommunications Commissioners for terms expiring June 30, 1997.

**Sec. 32.** Tom Keith of Cumberland County is appointed to the Real Estate Appraisal Board for a term expiring June 30, 1999.

**Sec. 33.** Lynda Petty of Randolph County, Linwood Parker of Johnston County, Jorga Barker of Craven County, Howard Danieleley of Alamance County, and Harris Blake of Moore County are appointed to the Commission on School Facility Needs for terms expiring June 30, 1999.

**Sec. 34.** Jim Peden of Wake County and Chandler Bryan of Iredell County are appointed to the Board of Trustees of the North Carolina School of Science and Mathematics for terms expiring June 30, 1997.

**Sec. 35.** Betsy Justus of Wake County, Susan Burroughs of Forsyth County, Wallace Nelson of Perquimans County, and Judy Kennedy of Union County are appointed to the Commission on School Technology for terms expiring June 30, 1997.

**Sec. 36.** John Schrote of Currituck County is appointed to the North Carolina Seafood Industrial Park Authority for a term expiring June 30, 1997.

**Sec. 37.** Litchard Hurley of Randolph County is appointed to the North Carolina Sheriffs' Education and Training Standards Commission for a term beginning September 1, 1995, and expiring August 31, 1997.

**Sec. 38.** Kermit Williamson of Sampson County and Lee Stevens of Robeson County are appointed to the Southeastern North Carolina Farmers Market Commission for terms expiring June 30, 1998.

**Sec. 39.** Wyatt G. Upchurch of Hoke County and George Rountree, III of New Hanover County are appointed to the Southeastern North Carolina Regional Economic Development Commission for terms expiring June 30, 1999.

**Sec. 40.** William F. Maready of Forsyth County is appointed to the North Carolina State Ports Authority for a term expiring June 30, 1997.

**Sec. 41.** Vick Parks of Randolph County (retired State employee) and Charles Crutchfield of Wake County (public member non-State employee) are appointed to the Board of Trustees of the Teachers' and State

Employees' Comprehensive Major Medical Plan for terms expiring June 30, 1997.

**Sec. 42.** Ed Goode of Mecklenburg County is appointed to the Board of Trustees of the Teachers' and State Employees' Retirement System for a term expiring June 30, 1997.

**Sec. 43.** Joyce Rhodes of Moore County is appointed for a term expiring June 30, 1997, and Franz Holscher of Gaston County is appointed to the North Carolina Teaching Fellows Commission for a term expiring June 30, 1999.

**Sec. 44.** Tom Darden of Wake County is appointed to the Board of Transportation for a term expiring June 30, 1997.

**Sec. 45.** Joan Danieleley of Forsyth County is appointed to the Board of Trustees of the University of North Carolina Center for Public Television for a term expiring June 30, 1997.

**Sec. 46.** Borden Hanes of Forsyth County and Emily Meymandi of Wake County are appointed to the Board of Trustees of the North Carolina Museum of Art for terms expiring June 30, 1997.

**Sec. 47.** James B. Black, Jr. of Mecklenburg County, Ralph Squires of Mecklenburg County, and Charles R. Preston of Catawba County are appointed to the Wildlife Resources Commission for terms expiring April 25, 1997.

**Sec. 48.** Unless otherwise provided, appointments made by this act are for terms beginning upon the ratification of this act.

**Sec. 49.** (a) G.S. 158-8.1(b) reads as rewritten:

"(b) The Commission shall consist of ~~45~~ 19 members appointed as follows:

- (1) Three members shall be appointed by the Governor;
- (2) Two members appointed by the Lieutenant Governor;
- (3) ~~Five~~ Seven members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- (4) ~~Five~~ Seven members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121; and".

(b) G.S. 158-8.1(c) reads as rewritten:

"(c) The appointing authority shall designate two of the initial appointees pursuant to subsection (b)(1), one of the initial appointees pursuant to subsection (b)(2), two of the initial appointees pursuant to subsection (b)(3), and two of the initial appointees pursuant to subsection (b)(4) to serve for terms ending June 30, 1995; the remainder of the initial appointees shall serve for terms ending June 30, 1997. Their successors shall serve for four-year terms ending on June 30 quadrennially thereafter. The appointing authority shall designate the additional appointees under subsections (b3) and (b4) that were added to the Commission membership pursuant to an act of the 1995 General Assembly to serve for terms ending June 30, 1999.

Any appointment to fill a vacancy on the Commission shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be in accordance with G.S. 120-122."



**Sec. 50.** Ray Rouse, III of Wayne County and R. Stephen Stroud of Wake County are appointed to the Centennial Authority for terms expiring July 1, 1999. Temple Sloan, Jr. of Wake County and Brent Barringer of Wake County are appointed to the Centennial Authority for terms expiring July 1, 1997.

**Sec. 51.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1995.

H.B. 550

**CHAPTER 489**

**AN ACT REMOVING A CERTAIN TRACT OF PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF RAMSEUR AND TO LIMIT ANNEXATION AND EXTRATERRITORIAL ZONING IN THE TOWN OF NORTH TOPSAIL BEACH.**

*The General Assembly of North Carolina enacts:*

**Section 1.** It has been determined that the Town of Ramseur cannot provide city services to a certain tract of property previously annexed pursuant to Part 2 of Article 4A of Chapter 160A of the General Statutes effective on January 1, 1994, and the Board of Commissioners of the Town of Ramseur has requested it be deannexed.

**Sec. 2.** The following described property is removed from the corporate limits of the Town of Ramseur:

BEGINNING at the Southwest corner of Annexation Area 2 described in that certain Annexation Ordinance recorded in Book 1347 at Page 457 in the Randolph County Registry at N.C. Grid Coordinates N 724.548.25 and E 1,804.144.40; thence from the beginning corner with the boundary of Friendly Woods Subdivision the following courses: North 03 degrees 40 minutes 39 seconds East 1412.79 feet to a corner, an iron pipe, and South 85 degrees 42 minutes 48 seconds East 813.54 feet to a corner, an iron pipe in the western right of way of North Brady Street; thence with the western right of way of North Brady Street with a curve to the right a curve length of 170.98 feet, a chord bearing and distance of North 04 degrees 00 minutes 27 seconds West 170.05 feet, a radius of 471.87 feet, a tangent of 86.44 feet, and a delta angle of 20 degrees 45 minutes 40 seconds to a corner, an iron pipe in the western right of way of North Brady Street; thence across North Brady Street, North 89 degrees 49 minutes 37 seconds East 375.51 feet to a corner in the western terminus of Huntingwood Road (SR 2506); thence along the western terminus of Huntingwood Road and the west line of Danny R. and Betty J. Shaw, South 05 degrees 06 minutes 22 seconds West 193.36 feet to an iron pipe; thence North 86 degrees 46 minutes 59 seconds West 123.82 feet along the northern line of Michael Glenn Trogdon to an iron pipe in a branch; thence along the branch and along the west lines of Michael Glenn Trogdon and the Randolph County Board of Education the following courses and distances: South 07 degrees 46 minutes 18 seconds East 115.26 feet, South 32 degrees 08 minutes 46 seconds East 101.81 feet, South 51 degrees 42 minutes 29 seconds East 143.35 feet, South 10 degrees 11 minutes 29 seconds West 73.78 feet,

South 46 degrees 13 minutes 31 seconds East 225.37 feet, South 00 degrees 05 minutes 31 seconds East 82.87 feet, South 04 degrees 16 minutes 31 seconds East 80.49 feet, South 07 degrees 51 minutes 29 seconds West 29.30 feet, South 20 degrees 47 minutes 31 seconds East 35.83 feet and South 09 degrees 36 minutes 01 seconds East 489.33 feet; thence South 79 degrees 28 minutes 29 seconds West 311.32 feet to the East right of way line of North Brady Street; thence along said right of way line two calls: North 10 degrees 20 minutes 51 seconds West 78.71 feet and North 07 degrees 14 minutes 51 seconds West 103.13 feet; thence crossing North Brady Street and continuing along the north line of Watkins Management Partners, L.L.C. and Watkins and Rich, South 76 degrees 06 minutes 09 seconds West 398.26 feet to Barbara Rains corner; thence along Barbara Rains' east line, South 11 degrees 08 minutes 37 seconds East 127.47 feet to a point in the south line of said Annexation Area 2 at N.C. Grid Coordinates N 724559.141 and E 1,805,005.304; thence along the south line of said Annexation Area 2, North 89 degrees 16 minutes 30 seconds West 680.02 feet to a concrete monument; thence continuing along the south line of said Annexation Area 2, South 89 degrees 16 minutes 30 seconds West 180.66 feet to the Beginning. Containing 41.966 acres.

**Sec. 2.1.** The Charter of the Town of North Topsail Beach, being Chapter 100 of the Session Laws of 1989, is amended by adding new sections to read:

"Sec. 2.2. *Extension.* The corporate limits of the Town may not be extended to include any territory across the Intracoastal Waterway from the area described in Section 2.1 of this Charter.

Sec. 2.3. *Extraterritorial Planning Jurisdiction.* The Town may not exercise any extraterritorial jurisdiction under Article 19 of Chapter 160A of the General Statutes as to any territory across the Intracoastal Waterway from the area described in Section 2.1 of this Charter."

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1995.

S.B. 901

## CHAPTER 490

AN ACT TO PROVIDE PARITY BETWEEN THE PRESIDENT PRO TEMPORE AND THE SPEAKER BY HAVING CERTAIN APPOINTMENTS MADE BY OR UPON THE RECOMMENDATION OF THE PRESIDENT PRO TEMPORE OF THE SENATE RATHER THAN THE PRESIDENT OF THE SENATE.

*The General Assembly of North Carolina enacts:*

--ADVISORY COMMITTEE ON ABANDONED CEMETERIES

**Section 1.** G.S. 143B-128(a) reads as rewritten:

"(a) There is created the Advisory Committee on Abandoned Cemeteries to be composed of 17 members appointed as follows:

- (1) Two by the Governor;
- (2) One by the President Pro Tempore of the Senate;
- (3) One by the Speaker of the House;

- (4) One by the Secretary of the Department of Cultural Resources;
- (5) One by the Executive Director of the North Carolina Commission of Indian Affairs, Department of Administration;
- (6) One each by the chief executive of the following organizations, from the membership of the organization:
  - a. North Carolina Archaeological Council;
  - b. North Carolina Association of County Commissioners;
  - c. North Carolina Chapter of the Daughters of the American Revolution;
  - d. North Carolina Chapter of the Society of the Cincinnati;
  - e. North Carolina Chapter of the Sons of the American Revolution;
  - f. North Carolina Genealogical Society;
  - g. North Carolina Historical Commission;
  - h. North Carolina League of Municipalities;
  - i. Society of the Colonial Dames of America in the State of North Carolina;
  - j. Sons of Confederate Veterans;
  - k. United Daughters of the Confederacy."

#### --NORTH CAROLINA CENTER FOR ADVANCEMENT OF TEACHING

**Sec. 2.** G.S. 116-74.7(a) reads as rewritten:

"(a) The NCCAT Board of Trustees shall be composed of the following membership:

- (1) Three ex officio members: the President of The University of North Carolina, the State Superintendent of Public Instruction, and the Chancellor of Western Carolina University;
- (2) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate;
- (3) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
- (4) Eight members appointed by the Board of Governors, one from each of the eight educational regions.

The appointing authorities shall give consideration to assuring, through Board membership, the statewide mission of NCCAT."

#### --GOVERNOR'S ADVISORY COUNCIL ON AGING

**Sec. 3.** G.S. 143B-181 reads as rewritten:

"§ 143B-181. *Governor's Advisory Council on Aging -- members; selection; quorum; compensation.*

The Governor's Advisory Council on Aging of the Department of Human Resources shall consist of 33 members, 29 members to be appointed by the Governor, two members to be appointed by the ~~Lieutenant Governor~~, President Pro Tempore of the Senate, and two members to be appointed by the Speaker of the House of Representatives. The composition of the Council shall be as follows: one representative of the Department of Administration; one representative of the Department of Cultural Resources; one representative of the Employment Security Commission; one

representative of the Teachers' and State Employees' Retirement System; one representative of the Commissioner of Labor; one representative of the Department of Public Instruction; one representative of the Department of Environment, Health, and Natural Resources; one representative of the Department of Insurance; one representative of the Department of Crime Control and Public Safety; one representative of the Department of Community Colleges; one representative of the School of Public Health of The University of North Carolina; one representative of the School of Social Work of The University of North Carolina; one representative of the Agricultural Extension Service of North Carolina State University; one representative of the collective body of the Medical Society of North Carolina; and 19 members at large. The at large members shall be citizens who are knowledgeable about services supported through the Older Americans Act of 1965, as amended, and shall include persons with greatest economic or social need, minority older persons, and participants in programs under the Older Americans Act of 1965, as amended. The Governor shall appoint 15 members at large who meet these qualifications and are 60 years of age or older. The four remaining members at large, two of whom shall be appointed by the Lieutenant Governor President Pro Tempore of the Senate and two of whom shall be appointed by the Speaker of the House of Representatives, shall be broadly representative of the major private agencies and organizations in the State who are experienced in or have demonstrated particular interest in the special concerns of older persons. At least one of each of the at-large appointments of the Lieutenant Governor President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be persons 60 years of age or older. The Council shall meet at least quarterly.

Members at large shall be appointed for four-year terms and until their successors are appointed and qualify. Ad interim appointments shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council as chairman to serve in such capacity at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources."

#### --NORTH CAROLINA AGRICULTURAL FINANCE AUTHORITY

**Sec. 4.** G.S. 122D-4(b) reads as rewritten:

"(b) The Authority shall be composed of 10 members. The Commissioner shall serve ex officio, with the same rights and privileges, including voting rights, as other members. The other nine members shall be appointed in the following manner:

- (1) Three members appointed by the General Assembly upon the recommendation of the Speaker of the House under G.S. 120-121;
- (2) Three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121; and
- (3) Three members appointed by the Governor."

#### --COMMISSION ON AGRICULTURE, FORESTRY, AND SEAFOOD AWARENESS

**Sec. 5.** G.S. 120-150 reads as rewritten:

"§ 120-150. *Creation; appointment of members.*

There is created an Agriculture and Forestry Awareness Study Commission. Members of the Commission shall be citizens of North Carolina who are interested in the vitality of the agriculture and forestry sectors of the State's economy. Members shall be as follows:

- (1) Three appointed by the Governor;
- (2) Three appointed by the President Pro Tempore of the Senate;
- (3) Three appointed by the Speaker of the House;
- (4) The chairman of the House Agriculture Committee;
- (5) The chairman of the Senate Agriculture Committee;
- (6) The Commissioner of Agriculture or his designee;
- (7) A member of the Board of Agriculture designated by the chairman of the Board of Agriculture;
- (8) The President of the North Carolina Farm Bureau Federation, Inc., or his designee;
- (9) The Master of the North Carolina State Grange or his designee;
- (10) The Secretary of the Department of Environment, Health, and Natural Resources or his designee; and
- (11) The President of the North Carolina Forestry Association, Inc., or his designee.

Members shall be appointed for two-year terms beginning October 1 of each odd-numbered year. The cochairmen of the Commission shall be the chairmen of the Senate and House Agriculture Committees respectively."

#### --ALARM SYSTEMS LICENSING BOARD

**Sec. 6.** G.S. 74D-4(b) reads as rewritten:

"(b) The Board shall consist of seven members: the Attorney General or his designee; two persons appointed by the Governor, one of whom shall be licensed under this Chapter and one of whom shall be a public member; two persons appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, one of whom shall be licensed under this Chapter and one of whom shall be a public member; and two persons appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one of whom shall be licensed under this Chapter and one of whom shall be a public member."

#### --ANDREW JACKSON HISTORIC MEMORIAL COMMITTEE

**Sec. 7.** G.S. 143B-132(b) reads as rewritten:



"(b) There is created an Andrew Jackson Historic Memorial Committee to consist of 12 members, six appointed by the Speaker of the House of Representatives and six appointed by the President Pro Tempore of the Senate. Members shall serve four-year terms. Vacancies shall be filled by the appointing officer for the unexpired term."

#### --ART MUSEUM BOARD OF TRUSTEES

**Sec. 8.** G.S. 140-5.13(b) reads as rewritten:

"(b) The Board of Trustees of the North Carolina Museum of Art shall consist of 28 members, chosen as follows:

- (1) The Governor shall appoint twelve members, one from each congressional district in the State in accordance with G.S. 147-12(3b);
- (2) The North Carolina Art Society, Incorporated, shall elect four members;
- (3) The North Carolina Museum of Art Foundation, Incorporated, shall elect four members;
- (4) The Board of Trustees of the North Carolina Museum of Art shall elect four members;
- (5) The General Assembly shall appoint four members, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121;
- (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 49.

All regular appointments or elections except those by the General Assembly shall be for terms of six years, except that each member shall serve until his successor is chosen and qualifies. No person may be appointed or elected to more than two consecutive terms of six years. All regular appointments by the General Assembly shall be for the then current legislative term, and no appointee of the General Assembly may be appointed to more than two consecutive terms of two years."

#### --ART MUSEUM BUILDING COMMISSION

**Sec. 8.1.** G.S. 143B-59 reads as rewritten:

"§ 143B-59. *Art Museum Building Commission -- members; selection; quorum; compensation.*

The Art Museum Building Commission of the Department of Cultural Resources shall consist of 15 members with nine appointed by the Governor, three persons who have served in the State Senate to be appointed by the President Pro Tempore of the Senate, and three persons who have served in the House of Representatives to be appointed by the Speaker of the House of Representatives. The initial members of the Commission shall be the members of the existing Art Museum Building Commission who shall serve until the completion of the duties assigned to the Commission. Each vacancy occurring in the membership shall be filled by appointment of the officer authorized to make the initial appointment to the place vacated, and each appointee to fill a vacancy shall have the same qualifications prescribed by this Article for the appointee whom he succeeds.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provision of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Cultural Resources."

#### --STATE BANKING COMMISSION

**Sec. 9.** G.S. 53-92 reads as rewritten:

" § 53-92. *Appointment of Commissioner of Banks; State Banking Commission.*

(a) On or before April 1, 1983, and quadrennially thereafter, the Governor shall appoint a Commissioner of Banks subject to confirmation by the General Assembly by joint resolution. The name of the Commissioner of Banks shall be submitted to the General Assembly on or before February 1, of the year in which the term of his office begins. The term of office for the Commissioner of Banks shall be four years. In case of a vacancy in the office of Commissioner of Banks for any reason prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor to the General Assembly, not later than four weeks after the vacancy arises. If a vacancy arises in the office when the General Assembly is not in session, the Commissioner of Banks shall be appointed by the Governor to serve on an interim basis pending confirmation by the General Assembly.

(b) The State Banking Commission, which has heretofore been created, shall consist of the State Treasurer, who shall serve as an ex officio member thereof, 12 members appointed by the Governor, and two members appointed by the General Assembly under G.S. 120-121, one of whom shall be appointed upon the recommendation of the President *Pro Tempore* of the Senate and one of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives. The Governor shall appoint five practical bankers and seven persons selected primarily as representatives of the borrowing public. The person appointed by the General Assembly upon the recommendation of the President *Pro Tempore* of the Senate shall be a practical banker. The person appointed by the General Assembly upon the recommendation of the Speaker of the House shall be a person selected primarily as a representative of the borrowing public. The persons selected primarily as representatives of the borrowing public shall not be employees or directors of any financial institution nor shall they have any interest in any regulated financial institution other than as a result of being a depositor or borrower. Under this section, no person shall be considered to have an interest in a financial institution whose interest in any financial institution does not exceed one-half of one percent ( $1/2$  of 1%) of the capital stock of that financial institution. These members of the Commission shall be selected so as to fully represent the consumer, industrial, manufacturing, professional, business and farming interests of the State. No person shall

serve on the Commission for more than two complete consecutive terms. As the terms of office of the appointive members of the Commission expire, their successors shall be appointed by the person appointing them, for terms of four years each. Any vacancy occurring in the membership of the Commission shall be filled by the appropriate appointing officer for the unexpired term, except that vacancies among members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. The appointed members of the Commission shall receive as compensation for their services the same per diem and expenses as is paid to the members of the Advisory Budget Commission. This compensation shall be paid from the fees collected from the examination of banks as provided by law.

(c) The Banking Commission shall meet at such time or times, and not less than once every three months, as the Commission shall, by resolution, prescribe, and the Commission may be convened in special session at the call of the Governor, or upon the request of the Commissioner of Banks. The State Treasurer shall be chairman of the said Commission.

No member of said Commission shall act in any matter affecting any bank in which he is financially interested, or with which he is in any manner connected. No member of said Commission shall divulge or make use of any information coming into his possession as a result of his service on such Commission, and shall not give out any information with reference to any facts coming into his possession by reason of his services on such Commission in connection with the condition of any State banking institution, unless such information shall be required of him at any hearing at which he is duly subpoenaed, or when required by order of a court of competent jurisdiction.

A quorum shall consist of a majority of the total membership of the Banking Commission. A majority vote of the members qualified with respect to a matter under review present at that meeting shall constitute valid action of the Banking Commission. The State Treasurer and all disqualified members who are present shall be counted to determine whether a quorum is present at a meeting.

The Commissioner of Banks shall act as the executive officer of the Banking Commission, but the Commission shall provide, by rules and regulations, for hearings before the Commission upon any matter or thing which may arise in connection with the banking laws of this State upon the request of any person interested therein, and review any action taken or done by the Commissioner of Banks.

(d) The Banking Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of Banks of all powers, duties, and functions now vested in or exercised by the Commissioner of Banks under the banking laws of this State: any party to a proceeding before the Banking Commission may, within 20 days after final order of said Commission and by written notice to the Commissioner of Banks, appeal to the Superior Court of Wake County for a final determination of any question of law which may be involved. The cause shall be entitled 'State of North Carolina on Relation of the Banking Commission against (here insert name of appellant).' It shall be placed on the civil issue docket of such court and shall have precedence over other

civil actions. In the event of an appeal the Commissioner shall certify the record to the Clerk of Superior Court of Wake County within 15 days thereafter."

#### --CHILD DAY-CARE COMMISSION

Sec. 10. G.S. 143B-168.4 reads as rewritten:

"§ 143B-168.4. *Child Day-Care Commission -- members; selection; quorum.*

(a) The Child Day-Care Commission of the Department of Human Resources shall consist of 15 members. Seven of the members shall be appointed by the Governor and eight by the General Assembly, four upon the recommendation of the President Pro Tempore of the Senate, and four upon the recommendation of the Speaker of the House of Representatives. Four of the members appointed by the Governor, two by the General Assembly on the recommendation of the President Pro Tempore of the Senate, and two by the General Assembly on the recommendation of the Speaker of the House of Representatives, shall be members of the public who are not employed in, or providing, day care and who have no financial interest in a day care facility or home. Two of the foregoing public members appointed by the Governor, one of the foregoing public members recommended by the President Pro Tempore of the Senate, and one of the foregoing public members recommended by the Speaker of the House of Representatives shall be parents of children receiving day care services. Of the remaining two public members appointed by the Governor, one shall be a pediatrician currently licensed to practice in North Carolina. Three of the members appointed by the Governor shall be day care providers, one of whom shall be affiliated with a for profit day care facility, one of whom shall be affiliated with a for profit day care home, and one of whom shall be affiliated with a nonprofit home or facility. Two of the members appointed by the General Assembly on the recommendation of the President Pro Tempore of the Senate, and two by the General Assembly on recommendation of the Speaker of the House of Representatives, shall be day care providers, one affiliated with a for profit day care facility or home, and one affiliated with a nonprofit day care facility or home. None may be employees of the State.

(b) Members shall be appointed as follows:

- (1) Of the Governor's initial appointees, four shall be appointed for terms expiring June 30, 1986, and three shall be appointed for terms expiring June 30, 1987;
- (2) Of the General Assembly's initial appointees appointed upon recommendation of the President of the Senate, two shall be appointed for terms expiring June 30, 1986, and two shall be appointed for terms expiring June 30, 1987;
- (3) Of the General Assembly's initial appointees appointed upon recommendation of the Speaker of the House of Representatives, two shall be appointed for terms expiring June 30, 1986, and two shall be appointed for terms expiring June 30, 1987.

Appointments by the General Assembly shall be made in accordance with G.S. 120-121. After the initial appointees' terms have expired, all members shall be appointed to serve two-year terms. Any appointment to fill a vacancy



on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

(c) A vacancy occurring during a term of office is filled:

- (1) By the Governor, if the Governor made the initial appointment;
- (2) By the General Assembly, if the General Assembly made the initial appointment in accordance with G.S. 120-122.

At its first meeting the Commission members shall elect a chairman to serve a two-year term. Chairmen shall be elected for two-year terms thereafter. The same member may serve as chairman for two consecutive terms.

Commission members may be reappointed and may succeed themselves for a maximum of four consecutive terms.

The Commission shall meet quarterly, and at other times at the call of the chairman or upon written request of at least six members.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources."

#### --STATE BOARD OF CHIROPRACTIC EXAMINERS

**Sec. 11.** G.S. 90-139 reads as rewritten:

" § 90-139. *Creation and membership of Board of Examiners.*

(a) The State Board of Chiropractic Examiners is created to consist of seven members appointed by the Governor, and General Assembly. Six of the members shall be practicing doctors of chiropractic, who are residents of this State and who have actively practiced chiropractic in the State for at least eight consecutive years immediately preceding their appointments: four of these six members shall be appointed by the Governor, and two by the General Assembly in accordance with G.S. 120-121, one each upon the recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. No more than three members of the Board may be graduates of the same college or school of chiropractic. The other member shall be a person chosen by the Governor to represent the public at large. The public member shall not be a health care provider nor the spouse of a health care provider. For purposes of Board membership, 'health care provider' means any licensed health care professional and any agent or employee of any health care institution, health care insurer, health care professional school, or a member of any allied health profession. For purposes of this section, a person enrolled in a program to prepare him to be a licensed health care professional or an allied health professional shall be deemed a health care provider. For purposes of this section, any person with significant financial interest in a health service or profession is not a public member.

(b) All Board members serving on June 30, 1981, shall be eligible to complete their respective terms. No member appointed to the Board on or after July 1, 1981, shall serve more than two complete consecutive terms, except that each member shall serve until his successor is chosen and



qualifies. The initial appointment of the General Assembly upon the recommendation of the President of the Senate shall be for a term to expire June 30, 1986, and the initial appointment of the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be for a term to expire June 30, 1985, subsequent appointments upon the recommendation of the President of the Senate shall be for terms of three years, subsequent appointments upon the recommendation of the Speaker of the House of Representatives shall be for terms of two years.

(c) The Governor and General Assembly, respectively, may remove any member appointed by them for good cause shown. In addition, upon the request of the Speaker of the House of Representatives or the President Pro Tempore of the Senate concerning a person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives or the President Pro Tempore of the Senate, respectively, the Governor may remove such appointee for good cause shown, if the request is made and removal occurs either (i) when the General Assembly has adjourned to a date certain, which date is more than 10 days after the date of adjournment, or (ii) after sine die adjournment of the regular session. The Governor may appoint persons to fill vacancies of persons appointed by him to fill unexpired terms. Vacancies in appointments made by the General Assembly shall be in accordance with G.S. 120-122."

**Sec. 11.1.** G.S. 90-140 reads as rewritten:

"§ 90-140. *Selection of chiropractic members of Board.*

The Governor and the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint chiropractic members of the Board for terms of three years from a list provided by the Board, and the General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint a chiropractic member of the Board for a term of two years from a list provided by the Board. For each vacancy, the Board must submit at least three names to the Governor, ~~Lieutenant Governor~~ President Pro Tempore of the Senate and Speaker of the House.

The Board shall establish procedures for the nomination and election of chiropractic members. These procedures shall be adopted under Article 2 of Chapter 150B of the General Statutes, and notice of the proposed procedures shall be given to all licensed chiropractors residing in North Carolina. These procedures shall not conflict with the provisions of this section. Every chiropractor with a current North Carolina license residing in this State shall be eligible to vote in all such elections, and the list of licensed chiropractors shall constitute the registration list for elections. Any decision of the Board relative to the conduct of such elections may be challenged by civil action in the Wake County Superior Court. A challenge must be filed not later than 30 days after the Board has rendered the decision in controversy, and all such cases shall be heard de novo."

#### --NORTH CAROLINA CODE OFFICIALS QUALIFICATION BOARD

**Sec. 12.** (a) G.S. 143-151.9(a) reads as rewritten:

"(a) There is hereby established the North Carolina Code Officials Qualification Board in the Department of Insurance. The Board shall be composed of 20 members appointed as follows:

- (1) One member who is a city or county manager;
- (2) Two members, one of whom is an elected official representing a city over 5,000 population and one of whom is an elected official representing a city under 5,000 population;
- (3) Two members, one of whom is an elected official representing a county over 40,000 population and one of whom is an elected official representing a county under 40,000 population;
- (4) Two members serving as building officials with the responsibility for administering building, plumbing, electrical and heating codes, one of whom serves a county and one of whom serves a city;
- (5) One member who is a registered architect;
- (6) One member who is a registered engineer;
- (7) Two members who are licensed general contractors, at least one of whom specializes in residential construction;
- (8) One member who is a licensed electrical contractor;
- (9) One member who is a licensed plumbing or heating contractor;
- (10) One member selected from the faculty of the North Carolina State University School of Engineering and one member selected from the faculty of the School of Engineering of the North Carolina Agricultural and Technical State University;
- (11) One member selected from the faculty of the Institute of Government;
- (12) One member selected from the Department of Community Colleges;
- (13) One member selected from the Division of Engineering and Building Codes in the Department of Insurance; and,
- (14) One member who is a local government fire prevention inspector and one member who is a citizen of the State.

The various categories shall be appointed as follows: (1), (2), (3), and (14) by the Governor; (4), (5), and (6) by the Lieutenant Governor; General Assembly upon the recommendation of the President Pro Tempore in accordance with G.S. 120-121; (7), (8), and (9) by the General Assembly upon the recommendation of the Speaker of the House of Representatives; Representatives in accordance with G.S. 120-121; (10) by the deans of the respective schools of engineering of the named universities; (11) by the Director of the Institute of Government; (12) by the President of the Community College System; and (13) by the Commissioner of Insurance."

(b) G.S. 120-123 is amended by adding a new subdivision to read:

"(63a) The North Carolina Code Officials Qualification Board, as established by G.S. 143-151.9."

#### --STATE BOARD OF COSMETIC ART EXAMINERS

Sec. 13. G.S. 88-13(b) reads as rewritten:

"(b) Cosmetologist members of the Board shall serve staggered three-year terms. In order to establish a staggered term system, the terms of those members currently serving on the Board shall expire as follows: the term of

the member having served the longest time on the Board shall expire on June 30, 1981; the term of the member having served the least time on the Board shall expire on June 30, 1983; and the term of the remaining cosmetologist member shall expire on June 30, 1982. Thereafter, all cosmetologist members shall serve three-year terms. One of the additional cosmetologist members added to the Board on July 1, 1987, shall be appointed by the General Assembly on the recommendation of the Lieutenant Governor in accordance with G.S. 120-121 and shall serve until June 30, 1990, 1990; provided that successors for terms beginning on or after July 1, 1997, shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The other additional cosmetologist member added to the Board on July 1, 1987, shall be appointed by the General Assembly on the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 and shall serve until June 30, 1989.

The Governor shall appoint the public member not later than July 1, 1981, to serve a three-year term.

No Board member appointed on or after July 1, 1981, shall serve more than two complete consecutive three-year terms, except that each member shall serve until his successor is appointed and qualifies.

#### --CRIME VICTIMS COMPENSATION COMMISSION

**Sec. 14.** G.S. 15B-3(a) reads as rewritten:

"(a) There is established the Crime Victims Compensation Commission of the Department of Crime Control and Public Safety, consisting of five members as follows:

- (1) One member to be appointed by the Governor;
- (2) One member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121;
- (3) One member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121;
- (4) The Attorney General or his designee; and
- (5) The Secretary of the Department of Crime Control and Public Safety or his designee."

#### --NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

**Sec. 15.** G.S. 17C-3(a) reads as rewritten:

"(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called 'the Commission,' in the Department of Justice. The Commission shall be composed of 26 members as follows:

- (1) Police Chiefs. -- Three police chiefs selected by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor.
- (2) Police Officers. -- Three police officials appointed by the North Carolina Police Executives Association and two criminal justice

officers certified by the Commission as selected by the North Carolina Law-Enforcement Officers' Association.

- (3) Departments. -- The Attorney General of the State of North Carolina; the Secretary of the Department of Crime Control and Public Safety; the Secretary of the Department of Human Resources; the Secretary of the Department of Correction; the President of the Department of Community Colleges.
- (4) At-large Groups. -- One individual representing and appointed by each of the following organizations: one mayor selected by the League of Municipalities; one law-enforcement training officer selected by the North Carolina Law-Enforcement Training Officers' Association; one criminal justice professional selected by the North Carolina Criminal Justice Association; one sworn law-enforcement officer selected by the North State Law-Enforcement Officers' Association; one member selected by the North Carolina Law-Enforcement Women's Association; and one District Attorney selected by the North Carolina Association of District Attorneys.
- (5) Citizens and Others. -- The President of The University of North Carolina; the Director of the Institute of Government; and two citizens, one of whom shall be selected by the Governor and one of whom shall be selected by the Attorney General. The General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall serve two-year terms to conclude on June 30th in odd-numbered years."

#### --NORTH CAROLINA BOARD OF DIETETICS/NUTRITION

**Sec. 16.** G.S. 90-354(a) reads as rewritten:

"(a) The members of the Board shall be appointed as follows:

- (1) The Governor shall appoint the professional member described in G.S. 90-353(a)(5) and the two public members described in G.S. 90-353(a)(6);
- (2) The General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint the professional members described in G.S. 90-353(a)(1) and G.S. 90-353(a)(2) in accordance with G.S. 120-121, one of whom shall be a nutritionist with a masters or higher degree in a nutrition-related discipline; and
- (3) The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint the professional members described in G.S. 90-353(a)(3) and G.S. 90-353(a)(4) in accordance with G.S. 120-121, one of whom shall be a nutritionist with a masters or higher degree in a nutrition-related discipline."

**--NORTH CAROLINA EDUCATIONAL FACILITIES FINANCE AGENCY**

**Sec. 17.** (a) G.S. 115E-4(a) reads as rewritten:

"(a) There is hereby created a body politic and corporate to be known as 'North Carolina Educational Facilities Finance Agency' which shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions. The agency shall be governed by a board of directors composed of seven members. Two of the members of said board shall be the State Treasurer and the State Auditor, both of whom shall serve ex officio. The remaining directors of the agency shall be residents of the State and shall not hold other public office. The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint one ~~director~~, director in accordance with G.S. 120-121, the General Assembly upon the recommendation of the Speaker of the House shall appoint one ~~director~~, director in accordance with G.S. 120-121, and the Governor shall appoint three of the directors of the agency. The five appointive directors of the agency shall be appointed for staggered four-year terms, two being appointed initially for one year by the President of the Senate and the Speaker of the House, respectively, and one for two years, one for three years and one for four years, respectively, as designated by the Governor, and each director shall continue in office until his successor shall be duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any vacancy in a position held by an appointive member shall be filled by a new appointment made by the officer who originally made such appointment. Any member of the board of directors shall be eligible for reappointment. Each appointive member of the board of directors may be removed by the Governor for misfeasance, malfeasance or neglect of duty after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each appointive member of the board of directors before entering upon his duties shall take an oath of office to administer the duties of his office faithfully and impartially and a record of such oath shall be filed in the office of the Secretary of State. The Governor shall designate from among the members of the board of directors a chairman and a vice-chairman. The terms of the chairman and vice-chairman shall extend to the earlier of either two years or the date of expiration of their then current terms as members of the board of directors of the agency. The board of directors shall elect and appoint and prescribe the duties of a secretary-treasurer and such other officers as it shall deem necessary or advisable, which officers need not be members of the board of directors."

(b) G.S. 120-123 is amended by adding a new subdivision to read:

"(64a) The North Carolina Educational Facilities Finance Agency, as established by G.S. 115E-4."

**--ENVIRONMENTAL MANAGEMENT COMMISSION**

**Sec. 18.** G.S. 143B-283(d) reads as rewritten:

"(d) In addition to the members designated by subsection (a), the General Assembly shall appoint four members, two upon the recommendation of the Speaker of the House of Representatives, and two



upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. The terms of initial appointees by the General Assembly shall expire on June 30, 1983. Thereafter, these members shall serve two-year terms."

--NORTH CAROLINA FARMWORKER COUNCIL

**Sec. 19.** G.S. 143B-426.25(b) reads as rewritten:

"(b) The North Carolina Farmworker Council shall consist of 13 members as follows:

- (1) Four shall be appointed by the Governor.
- (2) Two shall be appointed by the Speaker of the House of Representatives.
- (3) Two shall be appointed by the ~~Lieutenant Governor~~, President Pro Tempore of the Senate.
- (4) The Secretary of the Department of Human Resources or the Deputy Secretary of the Department if designated by the Secretary shall serve ex officio.
- (5) The Commissioner of Labor or the Deputy Commissioner of the Department if designated by the Commissioner shall serve ex officio.
- (6) The Commissioner of Agriculture or the Deputy Commissioner of the Department if designated by the Commissioner shall serve ex officio.
- (7) The Chairman of the Employment Security Commission or his designee shall serve ex officio.
- (8) The Secretary of Environment, Health, and Natural Resources or his designee shall serve ex officio."

--STATE FIRE AND RESCUE COMMISSION

**Sec. 20.** G.S. 58-78-1(a) reads as rewritten:

"(a) There is created the State Fire and Rescue Commission of the Department, which shall be composed of 14 voting members to be appointed as follows:

- (1) The Commissioner shall appoint eleven members, two from nominations submitted by the North Carolina State Firemen's Association, one from nominations submitted by the North Carolina Association of Fire Chiefs, one from nominations submitted by the North Carolina Society of Fire Service Instructors, one from nominations submitted by the North Carolina Association of County Fire Marshals, one from nominations submitted by the North Carolina Fire Marshal's Association, two from nominations submitted by the North Carolina Association of Rescue and Emergency Medical Services, Inc., one mayor or other elected city official nominated by the President of the League of Municipalities, one county commissioner nominated by the President of the Association of County Commissioners, and one from the public at large;

- (2) The Governor shall appoint one member from the public at large; and
- (3) The General Assembly shall appoint two members from the public at large, one upon the recommendation of the Speaker of the House of Representatives pursuant to G.S. 120-121, and one upon the recommendation of the President Pro Tempore of the Senate pursuant to G.S. 120-121.

Public members may not be employed in State government and may not be directly involved in fire fighting or rescue services."

**--BOARD OF GOVERNORS OF THE NORTH CAROLINA HEALTH CARE EXCESS LIABILITY FUND**

**Sec. 21.** (a) G.S. 58-47-20(b) reads as rewritten:

"(b) The membership of and appointments to the Board shall be as follows:

- (1) Two members to be appointed by the ~~Lieutenant Governor~~ General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 from a list of two nominees per appointment submitted by the North Carolina Medical Society;
  - (2) Two members to be appointed by the General Assembly upon the recommendation of the Speaker of the House in accordance with G.S. 120-121 from a list of two nominees per appointment submitted by the North Carolina Hospital Association;
  - (3) One member to be appointed by the Governor from a list of two nominees submitted by the North Carolina Nurses' Association;
  - (4) One member to be appointed by the Governor from a list of two nominees submitted by the North Carolina Dental Society; and
  - (5) One member from a health care profession other than those enumerated in subdivisions (1) through (4) of this subsection to be appointed by the Governor."
- (b) G.S. 120-123 is amended by adding a new subdivision to read:
- "(65) The Board of Governors of the North Carolina Health Care Excess Liability Fund, as established by G.S. 58-47-20."

**--HEALTH INSURANCE TRUST COMMISSION**

**Sec. 22.** G.S. 58-68-15(b) reads as rewritten:

"(b) The Commission shall be appointed by the General Assembly, in accordance with G.S. 120-121, in the following manner:

- (1) One representative of small business employers eligible to participate in the program shall be appointed for an initial term of three years:
  - (1a) One person who shall be a representative of the public shall be appointed for an initial term of one year;
- (2) One domestic health care insurer licensed pursuant to Articles 65 and 66 of this Chapter shall be appointed for an initial term of two years; and
- (3) One physician licensed to practice medicine in North Carolina shall be appointed for an initial term of one year

upon the recommendation of the Speaker of the House of Representatives; and

- (1) One representative of an acute care hospital shall be appointed for an initial term of three years;
- (2) One domestic health care insurer licensed pursuant to Articles 1 through 64 of this Chapter shall be appointed for an initial term of two years;
- (3) One representative of the business community whose company provides health insurance to its employees shall be appointed for an initial term of two years; and
- (4) One representative who shall represent the public and who is familiar with health insurance issues to serve as an advocate for low and moderate income employees shall be appointed for an initial term of one year

upon the recommendation of the President Pro Tempore of the Senate.

Initial one year terms shall expire June 30, 1988, initial two year terms shall expire June 30, 1989, and initial three year terms shall expire June 30, 1990.

After the initial terms expire, terms shall be for three years. Vacancies shall be filled in accordance with G.S. 120-122."

#### --NORTH CAROLINA COUNCIL ON THE HOLOCAUST

**Sec. 23.** G.S. 143B-216.21 reads as rewritten:

"§ 143B-216.21. *Membership; selection; quorum.*

The Council shall consist of 24 members, six appointed by the Governor, six appointed by the President Pro Tempore of the Senate, six appointed by the Speaker of the House of Representatives, and six appointed by the other 18 members. Members shall be appointed in 1985 for two-year terms to begin July 1, 1985. In 1987 and biennially thereafter, successors shall be appointed for two-year terms. The six at-large appointments shall be made by the Council at its first meeting after July 1 of each odd-numbered year. To be eligible for appointment as an at-large member, a person must either be a survivor of the Holocaust or a first-generation lineal descendant of such person. A majority of the members shall constitute a quorum for the transaction of business."

#### --NORTH CAROLINA HOUSING FINANCE AGENCY

**Sec. 24.** G.S. 122A-4(c) reads as rewritten:

"(c) The General Assembly shall appoint eight directors, four upon the recommendation of the Speaker of the House of Representatives (at least one of whom shall have had experience with a mortgage-servicing institution and one of whom shall be experienced as a licensed real estate broker), and four upon the recommendation of the President Pro Tempore of the Senate (at least one of whom shall be experienced with a savings and loan institution and one of whom shall be experienced in home building). Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Notwithstanding any other provision of law, the terms of the four noncategorical appointments by the General Assembly shall expire on June

30, 1983. Subsequent noncategorical appointments shall be for terms of two years each. The terms of the initial categorical appointees by the General Assembly upon the recommendation of the Speaker shall expire on June 30, 1983; the terms of subsequent appointees shall be two years. The term of one of the initial categorical appointees by the General Assembly upon the recommendation of the President of the Senate shall expire on June 30, 1983, and the other on June 30, 1985; the terms of subsequent appointees shall be four years."

#### --NORTH CAROLINA HOUSING PARTNERSHIP

**Sec. 25.** G.S. 122E-4(b) reads as rewritten:

"(b) The Partnership shall consist of 13 members as follows:

- (1) The Executive Director of the North Carolina Housing Finance Agency shall serve ex officio;
- (2) The Secretary of the Department of Commerce or his designee shall serve ex officio;
- (3) The State Treasurer or his designee shall serve ex officio;
- (4) In accordance with G.S. 120-121, five members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, provided that one member shall be a representative of the homebuilding industry, one member shall be a low income housing advocate, and one member shall be a representative of the League of Municipalities;
- (5) In accordance with G.S. 120-121, five members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, provided that one member shall be a representative of the real estate lending industry; one member shall be a representative of a non-profit housing development corporation; and one member shall be a resident of low income housing.

The members of the Partnership shall elect one of their members to serve as Chairman for a term of one year. Seven members of the Partnership shall constitute a quorum. All members shall have the right to vote on all issues before the Partnership."

#### --NORTH CAROLINA HUMAN RELATIONS COMMISSION

**Sec. 26.** G.S. 143B-392(a) reads as rewritten:

"(a) The Human Relations Commission of the Department of Administration shall consist of 21 members. The Governor shall appoint one member from each of the 12 congressional districts, plus five members at large, including the chairperson. The Speaker of the North Carolina House of Representatives shall appoint two members to the Commission. The ~~Lieutenant Governor~~ President Pro Tempore of the Senate shall appoint two members to the Commission. The terms of four of the members appointed by the Governor shall expire June 30, 1988. The terms of four of the members appointed by the Governor shall expire June 30, 1987. The terms of four of the members appointed by the Governor shall expire June 30, 1986. The terms of four of the members appointed by the Governor shall expire June 30, 1985. The terms of the members appointed by the Speaker

of the North Carolina House of Representatives shall expire June 30, 1986. The terms of the members appointed by the Lieutenant Governor shall expire June 30, 1986. The initial term of office of the person appointed to represent the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1996. At the end of the respective terms of office of the initial members of the Commission, the appointment of their successors shall be for terms of four years. No member of the commission shall serve more than two consecutive terms. A member having served two consecutive terms shall be eligible for reappointment one year after the expiration of his second term. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be filled in the manner of the original appointment for the unexpired term."

#### --NORTH CAROLINA STATE COMMISSION OF INDIAN AFFAIRS

**Sec. 27.** G.S. 143B-407(a) reads as rewritten: \_\_\_\_\_

"(a) The State Commission of Indian Affairs shall consist of two persons appointed by the General Assembly, the Secretary of Human Resources, the Director of the State Employment Security Commission, the Secretary of Administration, the Secretary of Environment, Health, and Natural Resources, the Commissioner of Labor or their designees and 18 representatives of the Indian community. These Indian members shall be selected by tribal or community consent from the Indian groups that are recognized by the State of North Carolina and are principally geographically located as follows: the Coharie of Sampson and Harnett Counties; the Eastern Band of Cherokees; the Haliwa of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke and Scotland Counties; the Meherrin of Hertford County; the Waccamaw-Siouan from Columbus and Bladen Counties; and the Native Americans located in Cumberland, Guilford and Mecklenburg Counties. The Coharie shall have two members; the Eastern Band of Cherokees, two; the Haliwa, two; the Lumbees, three; the Meherrin, one; the Waccamaw-Siouan, two; the Cumberland County Association for Indian People, two; the Guilford Native Americans, two; the Metrolina Native Americans, two. Of the two appointments made by the General Assembly, one shall be made upon the recommendation of the Speaker, and one shall be made upon recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121 and vacancies shall be filled in accordance with G.S. 120-122."

#### --NORTH CAROLINA INTERNSHIP COUNCIL

**Sec. 28.** G.S. 143B-418 reads as rewritten:

"§ 143B-418. *North Carolina Internship Council -- members; selection; quorum; compensation; clerical, etc., services.*

The North Carolina Internship Council shall consist of 17 members, including the Secretary of Administration or his designee, one member to be designated by and to serve at the pleasure of the Lieutenant Governor, President Pro Tempore of the Senate, one member to be designated by and to serve at the pleasure of the Speaker of the House of Representatives and



the following 14 members to be appointed by the Governor to a two-year term commencing on July 1 of odd-numbered years: two representatives of community colleges; four representatives of The University of North Carolina system; two representatives of private colleges or universities; three representatives of colleges or universities with an enrollment of less than 5,000 students; and three former interns.

At the end of the respective terms of office of the 14 members of the Council appointed by the Governor, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. The Governor may remove any member appointed by the Governor.

Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Council shall meet at the call of the chairman or upon written request of at least five members.

The Governor shall designate a member of the Council as chairman to serve at the pleasure of the Governor.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration."

#### --LEGISLATIVE INTERN PROGRAM COUNCIL

**Sec. 29.** G.S. 120-56 reads as rewritten:

"§ 120-56. *Legislative Intern Program Council created.*

There is hereby created the Legislative Intern Program Council which shall consist of the President Pro Tempore of the ~~Senate~~, Senate or the designee of that person, the Speaker of the House of Representatives or the designee of that person, and the chairman of the department of politics at North Carolina State University. Such Council shall establish a program for legislative interns for both houses of the General Assembly."

#### --LOCAL GOVERNMENT COMMISSION

**Sec. 30.** (a) G.S. 159-3(a) reads as rewritten:

"(a) The Local Government Commission consists of nine members. The State Treasurer, the State Auditor, the Secretary of State, and the Secretary of Revenue each serve ex officio: the remaining five members are appointed to four-year terms as follows: three by the Governor, one by the ~~Lieutenant Governor~~, General Assembly upon the recommendation of the President Pro Tempore in accordance with G.S. 120-121, and one by the General Assembly upon the recommendation of the Speaker of the House, ~~House in accordance with G.S. 120-121~~. Of the three members appointed by the Governor, one shall be or have been the mayor or a member of the governing board of a city and one shall be or have been a member of a county board of commissioners. The State Treasurer is chairman ex officio of the Local Government Commission. Membership on the Commission is

an office that may be held concurrently with one other office, as permitted by G.S. 128-1.1."

(b) G.S. 120-123 is amended by adding a new subdivision to read:

"(66) The Local Government Commission, as established by G.S. 159-3."

#### --ADVISORY COMMITTEE TO THE NORTH CAROLINA MEMBERS OF THE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT COMMISSION

**Sec. 31.** G.S. 104F-4 reads as rewritten:

"§ 104F-4. *Advisory Committee.*

The Advisory Committee to the North Carolina Members of the Low-Level Radioactive Waste Management Compact Commission is hereby created. It shall consist of seven voting members, two to be appointed by the Governor, who shall be members of the Radiation Protection Commission, two by the President Pro Tempore of the Senate, and two by the Speaker of the House of Representatives. The Chief of the Radiation Protection Section of the Division of Facility Services of the Department of Environment, Health, and Natural Resources shall be an ex officio member. The members shall serve for two-year terms. A vacancy in membership shall be filled by the appointing authority who made the initial appointment. A member whose term expires may be reappointed.

It shall be the duty of the Committee to consult with and advise the State's representatives to the Compact Commission concerning technical and policy matters.

The Governor shall appoint the Committee chairman and he may be reappointed. The Committee shall meet at such times and places as the chairman shall designate. The facilities of the State Legislative Building and the Legislative Office Building shall be available to the Committee, subject to approval of the Legislative Services Commission. Legislative members of the Committee shall be reimbursed for subsistence and travel expenses at the rates set out in G.S. 120-3.1. Members of the Committee who are not officers or employees of the State shall receive compensation and reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Committee who are officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rate set out in G.S. 138-6.

Subject to the approval of the Legislative Services Commission, the staff resources of the Legislative Services Commission shall be available to the Committee without cost except for travel, subsistence, supplies, and materials. The Committee may solicit, employ, or contract for technical assistance and clerical assistance and may purchase or contract for the materials and services it needs."

#### --NORTH CAROLINA LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT AUTHORITY

**Sec. 32.** G.S. 104G-5(c) reads as rewritten:

"(c) Appointment. -- Appointments to the Authority shall be made as follows:

- (1) The General Assembly shall appoint 10 members in accordance with G.S. 120-121, five upon recommendation of the Speaker of the House of Representatives and five upon recommendation of the President Pro Tempore of the Senate. Successors shall be made upon the recommendation of the officer who recommended the original appointment.
- (2) The Governor shall appoint five members.
- (3) Vacancies in appointments shall be filled for the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.
- (4) Members of the Authority shall include persons with technical and legal expertise in low-level radioactive waste management and shall represent, insofar as practicable, the diverse interests of the State and, initially, each geographic region of the State.
- (5) Initial appointments shall be made on or before 1 October 1987. Initial appointments to be made by the General Assembly shall be made as though vacancies had occurred in unexpired terms and in accordance with G.S. 120-122.
- (6) The Authority shall begin operation upon the appointment of all of its members, provided that the Authority shall begin operation by 1 November 1987, notwithstanding the failure of any of the appointing authorities to make appointments."

--NORTH CAROLINA MEDICAL DATABASE COMMISSION

Sec. 33. (a) G.S. 131E-211(b) reads as rewritten:

"(b) The North Carolina Medical Database Commission shall consist of nine members. The appointments shall be made as follows:

- (1) One representative of an employer of 200 or more employees in a business that is unrelated to a health care provider or third-party payor shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- (2) One representative of an employer of less than 200 employees in a business that is unrelated to a health care provider or third-party payor shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
- (3) One physician shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- (4) One hospital administrator shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
- (5) One representative of a commercial insurance company providing health insurance in North Carolina shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- (6) One representative of Blue Cross and Blue Shield of North Carolina shall be appointed by the General Assembly upon the

recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

- (7) One representative of State government at large shall be appointed by the Governor.
- (8) One nurse who provides raw data to the Commission pursuant to this Article or who is employed by a health care provider who provides raw data to the Commission pursuant to this Article shall be appointed by the General Assembly upon the recommendation of the Speaker of the House in accordance with G.S. 120-121.
- (9) One health care provider that provides raw data to the Commission pursuant to this Article shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

The Insurance Commissioner, the Secretary of Human Resources, and the Secretary of the Department of Environment, Health, and Natural Resources shall be ex officio members of the Commission without voting power. Any member of the Commission shall be automatically removed from the Commission upon certification by the Commission to the recommending authority that such member no longer satisfies the requirements for appointment to the Commission set forth in subdivisions (b)(1) through (b)(9) of this subsection.

Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Other vacancies in appointive terms shall be filled for the unexpired portion of the terms by appointment by the Governor."

(b) This section is effective only if the expiration of G.S. 131E-211 currently provided by Section 208(d) of Chapter 757 of the 1985 Session Laws, as amended by Chapter 480 of the 1991 Session Laws, is extended past January 1, 1997.

#### --COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES

**Sec. 34.** G.S. 143B-148(a) reads as rewritten:

"(a) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Human Resources shall consist of 26 members:

- (1) Four of whom shall be appointed by the General Assembly, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. These members shall have concern for the problems of mental illness, developmental disabilities, alcohol and drug abuse. Members shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122;
- (2) Twenty-two of whom shall be appointed by the Governor, one from each congressional district in the State in accordance with G.S. 147-12(3)b, and 10 at-large members.

- a. Of these 22 members, three shall have a special interest in mental health, three shall have a special interest in mental retardation, three shall have a special interest in developmental disabilities other than mental retardation, three shall have a special interest in alcohol abuse and alcoholism and three shall have a special interest in drug abuse. Each group of three shall be made up of one member who is a consumer representative; one other who is a representative of a local or State citizen organization or association; and one other who is a professional in the field.
  - b. The remaining seven members shall be appointed from the general public, other citizen groups, area mental health, developmental disabilities, and substance abuse authorities, or from other related agencies.
  - c. Of these 22 appointments, at least one shall be a licensed physician and at least one other shall be a licensed attorney.
  - d. The Governor shall appoint members to the Commission in accordance with the foregoing provisions. The terms of all Commission members appointed by the Governor shall be four years. The initial term of the person representing the 12th Congressional District shall begin January 3, 1993, and expire June 30, 1996. All Commission members shall serve their designated terms and until their successors are duly appointed and qualified. All Commission members may succeed themselves.
- (3) All appointments shall be made pursuant to current federal rules and regulations, when not inconsistent with State law, which prescribe the selection process and demographic characteristics as a necessary condition to the receipt of federal aid."

#### --MILK COMMISSION

**Sec. 35.** G.S. 106-266.7(a) reads as rewritten:

"(a) There is hereby continued a Milk Commission of the Department of Commerce, consisting of 10 members, three of whom shall be appointed by the Governor, four of whom shall be appointed by the General Assembly in accordance with G.S. 120-121 (two upon the recommendation of the President Pro Tempore of the Senate and two upon the recommendation of the Speaker of the House of Representatives) and three of whom shall be appointed by the Commissioner of Agriculture. Appointments by the General Assembly shall be in accordance with G.S. 120-121.

The three members appointed by the Governor shall be two public members and a person who operates a store or other establishment for the sale of fluid milk at retail for consumption off the premises. The two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be a Grade A producer, who primarily markets with a cooperative plant and whose primary interest is operating a dairy farm, and a public member. The two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be a dairy processor-distributor or an



employee of a dairy processor-distributor, who primarily operates a proprietary plant, and a public member. The three members appointed by the Commissioner of Agriculture shall be a dairy processor-distributor or an employee of a dairy processor-distributor who primarily operates a cooperative plant and a Grade A producer who primarily markets with a proprietary plant and whose primary interest is operating a dairy farm, and a public member.

The public members appointed pursuant to this subsection shall have no financial interest in, or be directly or indirectly involved in, the production, processing or distribution of milk or products derived therefrom.

Of the Commission members appointed following March 27, 1975, the Commissioner of Agriculture shall appoint three for a term ending June 30, 1976, the Governor shall appoint three for a term ending June 30, 1977, the General Assembly shall appoint upon the recommendation of the Speaker of the House of Representatives one for a term ending June 30, 1984 and one for a term ending June 30, 1985, and the General Assembly shall appoint upon the recommendation of the President of the Senate one for a term ending June 30, 1986, and one for a term ending June 30, 1987. Thereafter appointments of Commission members shall be made by the same appointing authorities for terms of four years, ending on June 30 of the appropriate year; provided that subsequent appointments by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be for terms of two years, ending on June 30 of the appropriate year. Provided, however, that all members appointed pursuant to this subsection shall serve until either they are reappointed and requalified or their successors are appointed and qualified. Any member of the Milk Commission may be removed for physical or mental incapacity, or for misfeasance or nonfeasance. In cases of removal from the Commission, the removal must be initiated by the person holding the office that originally made the appointment of such member, and subsequent appointments to fill such vacancies will be made in the normally prescribed manner for the remainder of the unexpired term by the person holding the office that originally made the appointment. If the office that originally made the appointment is vacant, the successor to such office shall fill such vacancy. In case of death, resignation, disqualification, or other physical or mental incapacity which prevents a Commission member from performing his official duties prior to the expiration of his term of office, his successor shall be appointed as provided in this subsection to fill out the unexpired term. Notwithstanding the above, persons appointed by the General Assembly may be removed by the General Assembly, and vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122."

#### --MOTOR VEHICLE DEALERS' ADVISORY BOARD

Sec. 36. G.S. 20-305.4 reads as rewritten:

"§ 20-305.4. *Motor Vehicle Dealers' Advisory Board.*

(a) The Motor Vehicle Dealers' Advisory Board shall consist of six members; three of which shall be appointed by the Speaker of the House of Representatives, and three of which shall be appointed by the ~~Lieutenant Governor~~ President Pro Tempore of the Senate to consult with and advise

the Commissioner with respect to matters brought before the Commissioner under the provisions of G.S. 20-304 through 20-305.4.

(b) Each member of the Motor Vehicle Dealers' Advisory Board shall be a resident of North Carolina. Three members of the Board shall be franchised dealers in new automobiles or trucks, duly licensed and engaged in business as such in North Carolina, provided that no two of such dealers may be franchised to sell automobiles or trucks manufactured or distributed by the same person or a subsidiary or affiliate of the same person. Three members of the Board shall not be motor vehicle dealers or employees of a motor vehicle dealer.

(c) The Speaker shall appoint two of the dealer members and one of the public members and shall fill any vacancy in said positions and the ~~Lieutenant Governor~~ President Pro Tempore of the Senate shall appoint one of the dealer members and two of the public members and shall fill any vacancy in said positions. In making the initial appointments the Speaker shall designate that the two dealer members shall serve for one and three years respectively and the public member shall serve for two years, and in making the initial appointments the Lieutenant Governor shall designate that the dealer member shall serve for two years and the two public members shall serve for one and three years respectively.

(d) Two members of the first Board appointed shall serve for a period of three years, two members of the first Board shall serve for a period of two years, and two members of the first Board shall serve for a period of one year. Subsequent appointments shall be for terms of three years, except appointments to fill vacancies which shall be for the unexpired terms. Members of the Board shall meet at the call of the Commissioner and shall receive as compensation for their services seven dollars (\$7.00) for each day actually engaged in the exercise of the duties of the Board and such travel expenses and subsistence allowances as are generally allowed other State commissions and boards."

#### --NATURAL HERITAGE TRUST FUND BOARD OF TRUSTEES

Sec. 37. (a) G.S. 113-77.8(a) reads as rewritten:

"(a) Expenditures from the Fund shall be authorized by a nine-member Board of Trustees. Three members shall be appointed by the Governor, three by the ~~Lieutenant Governor~~, General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and three by the General Assembly upon the recommendation of the Speaker of the House of Representatives. Representatives in accordance with G.S. 120-121. Persons appointed shall be knowledgeable in the acquisition and management of natural areas. Each appointing officer shall designate one of his initial appointments to serve a two-year term, one to serve a four-year term, and one to serve a six-year term. Thereafter, all appointments shall be for six years, subject to reappointment. All initial appointments shall be made on or before January 1, 1988. The Governor shall appoint one Trustee to serve as Chairman of the Board. The Secretary shall provide the Trustees with staff support and meeting facilities using expenditures from the Fund. The office of Trustee is declared to be an office that may be held concurrently with any other

executive or appointive office, under the authority of Article VI, Section 9, of the North Carolina Constitution."

(b) G.S. 120-123 is amended by adding a new subdivision to read:

"(67) The Board of Trustees of the Natural Heritage Trust Fund, as established by G.S. 113-77.8."

#### --GOVERNOR'S ADVOCACY COUNCIL FOR PERSONS WITH DISABILITIES

**Sec. 38.** G.S. 143B-403.2(a) reads as rewritten:

"(a) The Governor's Advocacy Council for Persons with Disabilities of the Department of Administration shall consist of 21 members, appointed as follows:

- (1) Seven members appointed by the Governor;
- (2) Seven members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate;
- (3) Seven members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives."

#### --PRIVATE PROTECTIVE SERVICES BOARD

**Sec. 39.** G.S. 74C-4(b) reads as rewritten:

"(b) The Board shall consist of 10 members: the Attorney General or his designated representative, two persons appointed by the Attorney General, one person appointed by the Governor, ~~two persons appointed by the General Assembly upon the recommendation of the President of the Senate,~~ one person three persons appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and three persons appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. All appointments by the General Assembly shall be subject to the provisions of G.S. 120-121, and vacancies in the positions filled by those appointments shall be filled pursuant to G.S. 120-122. ~~Those~~ One of those persons appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate and all three persons appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be licensees under this Chapter; all other appointees may not be licensees of the Board nor licensed by the Board while serving as Board members. All persons appointed shall serve terms of three years. With the exception of the Attorney General or his designated representative, no person shall serve more than eight consecutive years on the Board, including years of service prior and subsequent to July 1, 1983. Board members may continue to serve until their successors have been appointed."

#### --BOARD OF TRUSTEES OF THE NORTH CAROLINA PUBLIC EMPLOYEE DEFERRED COMPENSATION PLAN

**Sec. 40.** G.S. 143B-426.24(b) reads as rewritten:

"(b) The Board shall consist of seven voting members, as follows:

- (1) Three persons shall be appointed by the Governor who shall have experience with taxation, finance and investments, and one of whom shall be a State employee;

- (2) One member shall be appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives under G.S. 120-121;
- (3) One member shall be appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate under G.S. 120-121;
- (4) The State Treasurer, ex officio; and
- (5) The Secretary of Administration, ex officio, chairman."

#### --PUBLIC OFFICERS AND EMPLOYEES LIABILITY INSURANCE COMMISSION

**Sec. 41.** G.S. 58-32-1 reads as rewritten:

"§ 58-32-1. *Commission created; membership.*

There is hereby created within the Department a Public Officers and Employees Liability Insurance Commission. The Commission shall consist of 11 members who shall be appointed as follows: the Commissioner shall appoint six members as follows: two members who are members of the insurance industry who may be chosen from a list of three nominees submitted to the Commissioner by the Independent Insurance Agents of North Carolina, Inc., and a list of three nominees submitted by the Carolinas Association of Professional Insurance Agents. North Carolina Division; one member who is employed by a police department who may be chosen from a list of three nominees submitted to the Commissioner jointly by the North Carolina Police Chiefs Association and North Carolina Police Executives Association, and one member who is employed by a sheriff's department who may be chosen from a list of three nominees submitted to the Commissioner by the North Carolina Sheriff's Association; one member representing city government who may be chosen from a list of three nominees submitted to the Commissioner by the North Carolina League of Municipalities; and one member representing county government who may be chosen from a list of three nominees submitted to the Commissioner by the North Carolina Association of County Commissioners; and the General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representatives, and one upon the recommendation of the President Pro Tempore of the Senate. The Commissioner or his designate shall be an ex officio member. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. The terms of the initial appointees by the General Assembly shall expire on June 30, 1983. The Secretary of the Department of Crime Control and Public Safety or his designate shall be an ex officio member. The Attorney General or his designate shall be an ex officio member. One insurance industry member appointed by the Commissioner shall be appointed to a term of two years and one insurance industry member shall be appointed to a term of four years. The police department member shall be appointed to a term of two years and the sheriff's department member shall be appointed to a term of four years. The representative of county government shall be appointed to a term of two years and the representative of city government to a term of four years. Beginning July 1, 1983, the appointment made by the



General Assembly upon the recommendation of the Speaker shall be for two years, and the appointment made by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be for four years. Except as provided in this section, if any vacancy occurs in the membership of the Commission, the appointing authority shall appoint another person to fill the unexpired term of the vacating member. After the initial terms established herein have expired, all appointees to the Commission shall be appointed to terms of four years.

The Commission members shall elect the chairman and vice-chairman of the Commission. The Commission may, by majority vote, remove any member of the Commission for chronic absenteeism, misfeasance, malfeasance or other good cause."

#### --NORTH CAROLINA AGENCY FOR PUBLIC TELECOMMUNICATIONS

**Sec. 42.** G.S. 143B-426.9 reads as rewritten:

"§ 143B-426.9. *North Carolina Agency for Public Telecommunications -- creation; membership; appointments, terms and vacancies; officers; meetings and quorum; compensation.*

The North Carolina Agency for Public Telecommunications is created. It is governed by the Board of Public Telecommunications Commissioners, composed of 27 members as follows:

- (1) A Chairman appointed by, and serving at the pleasure of, the Governor;
- (2) Ten at-large members, appointed by the Governor from the general public;
- (3) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121;
- (4) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121;
- (5) The Secretary of Administration, ex officio;
- (6) The Chairman of the Board of Trustees of The University of North Carolina Center for Public Television (if and when established), ex officio;
- (7) The Chairman of the State Board of Education, ex officio;
- (8) The Chairman of the OPEN/net Committee, ex officio, so long as such person is not a State employee;
- (9) The Chairman of the North Carolina Utilities Commission, ex officio;
- (10) The Director of the Public Staff of the North Carolina Utilities Commission, ex officio;
- (11) The Chairman of the Public Radio Advisory Committee of the North Carolina Agency for Public Telecommunications, ex officio;
- (12) The Superintendent of Public Instruction, ex officio;
- (13) The President of the University of North Carolina, ex officio;



- (14) The President of the Department of Community Colleges, ex officio; and
- (15) Two members ex officio who shall rotate from among the remaining heads of departments enumerated in G.S. 143A-11 or G.S. 143B-6, appointed by the Governor.

The 10 at-large members shall serve for terms staggered as follows: four terms shall expire on June 30, 1980; and three terms shall expire on June 30, 1982; and three terms shall expire on June 30, 1984. Thereafter, the members at large shall be appointed for full four-year terms and until their successors are appointed and qualified. In making appointments of members at large, the Governor shall seek to appoint persons from the various geographic areas of the State including both urban and rural areas; persons from various classifications as to sex, race, age, and handicapped persons; and persons who are representatives of the public broadcast, commercial broadcast, nonbroadcast distributive systems and private education communities of the State.

The terms of the ex officio members are coterminous with their respective terms of office. In the event that any of the offices represented on the Board ceases to exist, the successor officer to the designated member shall become an ex officio member of the Board; if there shall be no successor, then the position on the Board shall be filled by a member to be appointed by the Governor from the general public. The ex officio members shall have the right to vote.

The initial members appointed to the Board by the General Assembly shall serve for terms expiring June 30, 1983. Thereafter, their successors shall serve for two-year terms beginning July 1 of odd-numbered years.

The terms of the rotating ex officio members shall be of one-year duration, and the schedule of rotation is determined by the Governor.

Each State official who serves on the Board may designate a representative of his department, agency or institution to sit in his place on the Board and to exercise fully the official's privileges of membership.

The Secretary of Administration or his designee serves as secretary of the Board.

Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Other vacancies shall be filled in the same manner as the original appointment.

The Governor may remove any member of the Board from office in accordance with the provisions of G.S. 143B-16.

The Board meets quarterly and at other times at the call of the chairman or upon written request of at least six members.

A majority of the Board members shall constitute a quorum for the transaction of business."

## --RULES REVIEW COMMISSION

**Sec. 43.** G.S. 143B-30.1(a) reads as rewritten:

"(a) The Rules Review Commission is created. The Commission shall consist of eight members to be appointed by the General Assembly, four upon the recommendation of the President Pro Tempore of the Senate, and four upon the recommendation of the Speaker of the House of

Representatives. These appointments shall be made in accordance with G.S. 120-121, and vacancies in these appointments shall be filled in accordance with G.S. 120-122. Except as provided in subsection (b) of this section, all appointees shall serve two-year terms.

#### --COMMISSION ON SCHOOL FACILITY NEEDS

**Sec. 44.** G.S. 115C-489.4(a) reads as rewritten:

"(a) There is created the Commission on School Facility Needs. The Commission shall be located administratively in the Department of Public Instruction but shall exercise all its prescribed statutory powers independently of the State Board of Education and the Department of Public Instruction.

The Commission shall consist of five members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, one of whom shall be recommended by the President of the Senate to serve as cochairman, and five members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one of whom shall be recommended by the Speaker of the House of Representatives to serve as cochairman.

The initial terms of members shall expire July 1, 1991. Their successors shall serve for four-year terms. A vacancy shall be filled for the remainder of the unexpired term in accordance with G.S. 120-122.

The initial meeting of the Commission shall be called jointly by the cochairmen.

Members of the Commission who are not State officers or employees shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5. Members who are State officers or employees shall be reimbursed for travel and subsistence in accordance with G.S. 138-6.

The Department of Public Instruction shall provide requested professional and clerical staff to the Commission. The Commission may also employ professional and clerical staff and may hire outside consultants to assist it in its work."

#### --BOARD OF TRUSTEES, NORTH CAROLINA SCHOOL OF SCIENCE AND MATHEMATICS

**Sec. 45.** G.S. 116-233(a) reads as rewritten:

"(a) There shall be a Board of Trustees of the School, which shall consist of 26 members:

- (1) Twelve members who shall be appointed by the Board of Governors of The University of North Carolina, one from each congressional district;
- (2) Four members without regard to residency who shall be appointed by the Board of Governors of The University of North Carolina;
- (3) Three members, *ex officio*, who shall be the chief academic officers, respectively, of constituent institutions. The Board of Governors shall in 1985 and quadrennially thereafter designate the three constituent institutions whose chief academic officers shall so

- serve, such designations to expire on June 30, 1989, and quadrennially thereafter;
- (4) The chief academic officer of a college or university in North Carolina other than a constituent institution, ex officio. The Board of Governors shall designate in 1985 and quadrennially thereafter which college or university whose chief academic officer shall so serve, such designation to expire on June 30, 1989, and quadrennially thereafter;
  - (5) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121;
  - (6) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121; and
  - (7) Two members appointed by the Governor."

#### --NORTH CAROLINA BOARD OF SCIENCE AND TECHNOLOGY

**Sec. 46.** G.S. 143B-426.31(a) reads as rewritten:

"(a) The North Carolina Board of Science and Technology consists of the Governor, the Science Advisor to the Governor, and 17 members appointed as follows: the Governor shall appoint one member from the University of North Carolina at Chapel Hill, one member from North Carolina State University at Raleigh, and two members from other components of the University of North Carolina, all nominated by the President of the University of North Carolina; one member from Duke University, nominated by the President of Duke University; one member from a private college or university, other than Duke University, in North Carolina, nominated by the President of the Association of Private Colleges and Universities; one member from the Research Triangle Institute, nominated by the executive committee of the board of that institute; one member from the Microelectronics Center of North Carolina, nominated by the executive committee of the board of that center; one member from the North Carolina Biotechnology Center, nominated by the executive committee of the board of that center; four members from private industry in North Carolina, at least one of whom shall be a professional engineer registered pursuant to Chapter 89C of the General Statutes or a person who holds at least a bachelors degree in engineering from an accredited college or university; and two members from public agencies in North Carolina. Two members shall be appointed by the General Assembly, one shall be appointed upon the recommendation of the President Pro Tempore of the Senate, and one shall be appointed upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The nominating authority for any vacancy on the Board among members appointed by the Governor shall submit to the Governor two nominations for each position to be filled, and the persons so nominated shall represent different disciplines."

#### --SEAFOOD INDUSTRIAL PARK AUTHORITY

**Sec. 47.** G.S. 113-315.25(d) reads as rewritten:

"(d) The General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representatives, and one upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. The terms of the initial appointees by the General Assembly shall expire on June 30, 1983. The terms of subsequent appointees by the General Assembly shall be two years."

#### --NORTH CAROLINA SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

**Sec. 48.** G.S. 17E-3(a)(2) as amended by Section 3 of Chapter 103 of the 1995 Session Laws reads as rewritten:

- "(2) Appointees of the General Assembly. -- One person appointed by the Speaker of the House of Representatives pursuant to G.S. 120-121 and one person appointed by the ~~Lieutenant Governor~~ General Assembly upon the recommendation of the President Pro Tempore of the Senate pursuant to G.S. 120-121."

#### --SOUTHEASTERN FARMERS MARKET COMMISSION

**Sec. 49.** G.S. 106-727(b) reads as rewritten:

"(b) The Commission shall consist of nine members, as follows:

- (1) The Commissioner of Agriculture;
- (2) Four members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, one of whom shall be designated to serve as chairman as provided in subsection (d) of this section; and
- (3) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121."

#### --SOUTHERN GROWTH POLICIES BOARD

**Sec. 50.** G.S. 143-492(b) reads as rewritten:

"(b) The Board shall consist of five members from each party state, as follows:

- (1) The governor.
- (2) Two members of the state legislature, one appointed by the presiding officer of each house of the legislature or in such other manner as the legislature may provide. For the Senate of North Carolina, the General Assembly provides that the appointment shall be made by the President Pro Tempore of the Senate.
- (3) Two residents of the state who shall be appointed by the governor to serve at his pleasure."

#### --DISCIPLINARY HEARING COMMISSION

**Sec. 51.** G.S. 84-28.1(a) reads as rewritten:

"(a) There shall be a disciplinary hearing commission of the North Carolina State Bar which shall consist of 15 members. Ten of these

members shall be members of the North Carolina State Bar, and shall be appointed by the council. The other five shall be citizens of North Carolina not licensed to practice law in this or any other state, three of whom shall be appointed by the Governor, one by the ~~Lieutenant Governor~~, General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and one by the General Assembly upon the recommendation of the Speaker of the House of Representatives, Representatives in accordance with G.S. 120-121. The council shall designate one of its appointees as chairman and another as vice-chairman. The chairman shall have actively practiced law in the courts of the State for at least 10 years. When the commission is first selected, five members, including three appointed by the council, one appointed by the Governor and the one appointed by the Speaker of the House of Representatives, shall be appointed for terms of one year; five members, including three appointed by the council, one appointed by the Governor and the one appointed by the Lieutenant Governor, shall be appointed for terms of two years; and the remaining five members shall be appointed for terms of three years. All such initial terms shall commence July 1, 1975. Thereafter five members shall be appointed each year to three-year terms to fill the positions of the terms then expiring. The council, the Governor, ~~the Lieutenant Governor~~ and ~~the Speaker of the House of Representatives~~, and the General Assembly respectively, shall appoint members to fill the unexpired term when any vacancy is created by resignation, disqualification, disability or ~~death~~, except that vacancies in appointments made by the General Assembly may also be filled as provided by G.S. 120-122. No member may serve more than a total of seven years or a one-year term and two consecutive three-year terms: Provided, that any member or former member who is designated chairman may serve one additional three-year term in that capacity. No member of the council may be appointed to the commission."

#### --STATE BUILDING COMMISSION

**Sec. 52.** G.S. 143-135.25(c) reads as rewritten:

"(c) The Commission shall consist of nine members qualified and appointed as follows:

- (1) A licensed architect whose primary practice is or was in the design of buildings, chosen from among not more than three persons nominated by the North Carolina Chapter of the American Institute of Architects, appointed by the Governor.
- (2) A registered engineer whose primary practice is or was in the design of engineering systems for buildings, chosen from among not more than three persons nominated by the Consulting Engineers Council and the Professional Engineers of North Carolina, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
- (3) A licensed building contractor whose primary business is or was in the construction of buildings, or an employee of a company holding a general contractor's license, chosen from among not more than three persons nominated by the Carolinas AGC



- (Associated General Contractors), appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- (4) A licensed electrical contractor whose primary business is or was in the installation of electrical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Electrical Contractors, and the Carolinas Electrical Contractors' Association, appointed by the Governor.
  - (5) A public member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
  - (6) A licensed mechanical contractor whose primary business is or was in the installation of mechanical systems for buildings, chosen from among not more than three persons nominated by the North Carolina Association of Plumbing, Heating, Cooling Contractors, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
  - (7) An employee of the university system currently involved in the capital facilities development process, chosen from among not more than three persons nominated by the Board of Governors of The University of North Carolina, appointed by the Governor.
  - (8) A public member who is knowledgeable in the building construction or building maintenance area, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
  - (9) A manager of physical plant operations whose responsibilities are or were in the operations and maintenance of physical facilities, chosen from among not more than three persons nominated by the North Carolina Association of Physical Plant Administrators, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

The members shall be appointed for staggered three-year terms: The initial appointments to the Commission shall be made within 15 days of the effective date of this act [April 14, 1987]. The initial terms of members appointed pursuant to subdivisions (1), (2), and (3) shall expire June 30, 1990; the initial terms of members appointed pursuant to (4), (5), and (6) shall expire June 30, 1989; and the initial terms of members appointed pursuant to (7), (8), and (9) shall expire June 30, 1988. Members may serve no more than six consecutive years. In making new appointments or filling vacancies, the Governor shall ensure that minorities and women are represented on the Commission.

Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of the unexpired terms. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.

The chairman of the Commission shall be elected by the Commission. The Secretary of State shall serve as chairman until a chairman is elected."

#### --STATE LIBRARY COMMISSION

**Sec. 53.** G.S. 143B-91(a) reads as rewritten:

"(a) The State Library Commission shall consist of 15 members. All members shall have an interest in the development of library and information services in North Carolina. Eight members shall be appointed by the Governor. One member shall be appointed by the ~~Lieutenant Governor~~, President Pro Tempore of the Senate. One member shall be appointed by the Speaker of the North Carolina House of Representatives. Three members shall be appointed by the North Carolina Public Library Directors Association. Two members shall be the President and the President-elect of the North Carolina Library Association or two appointees as determined by the North Carolina Library Association's Board of Directors. The State Librarian shall be an ex officio member and act as secretary to the Commission.

All appointments shall be for four-year terms with eight of the commissioners taking office on the first four-year cycle and seven commissioners taking office on the second four-year cycle. Any appointment to fill a vacancy in one of the positions appointed by the Governor, ~~Lieutenant Governor~~, President Pro Tempore or Speaker of the House of Representatives shall be for the remainder of the unexpired term. Appointees shall not serve more than two successive four-year terms.

The Governor shall choose a chairperson from among the gubernatorial appointees. The chairperson shall serve not more than two successive two-year terms as chair.

Members of the Commission shall receive per diem and necessary travel and subsistence expenses as provided in G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Cultural Resources.

The Commission shall meet at least twice a year."

#### --STATE PORTS AUTHORITY

**Sec. 54.** G.S. 143B-452 reads as rewritten:

"§ 143B-452. *Creation of Authority -- membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.*

The North Carolina State Ports Authority is hereby created. It shall be governed by a board composed of nine members and hereby designated as the Authority. Effective July 1, 1983, it shall be governed by a board composed of 11 members and hereby designated as the Authority. The General Assembly suggests and recommends that no person be appointed to the Authority who is domiciled in the district of the North Carolina House of Representatives or the North Carolina Senate in which a State port is located. The Governor shall appoint seven members to the Authority, and the General Assembly shall appoint two members of the Authority. Effective July 1, 1983, the Authority shall consist of seven persons appointed by the

Governor, and four persons appointed by the General Assembly. Effective July 1, 1989, the Governor shall appoint six members to the Authority, in addition to the Secretary of Commerce, who shall serve as a voting member of the Authority by virtue of his office. The Secretary of Commerce shall fill the first vacancy occurring after July 1, 1989, in a position on the Authority over which the Governor has appointive power.

The initial appointments by the Governor shall be made on or after March 8, 1977, two terms to expire July 1, 1979; two terms to expire July 1, 1981; and three terms to expire July 1, 1983. Thereafter, at the expiration of each stipulated term of office all appointments made by the Governor shall be for a term of six years.

To stagger further the terms of members:

- (1) Of the members appointed by the Governor to replace the members whose terms expire on July 1, 1991, one member shall be appointed to a term of five years, to expire on June 30, 1996; the other member shall be appointed for a term of six years, to expire on June 30, 1997;
- (2) Of the members appointed by the Governor to replace the members whose terms expire on July 1, 1993, one member shall be appointed to a term of five years, to expire on June 30, 1998; the other member shall be appointed to a term of six years, to expire on June 30, 1999;
- (3) Of those members appointed by the Governor to replace the members whose terms expire on July 1, 1995, one member shall be appointed to a term of five years, to expire on June 30, 2000; the other member shall be appointed to a term of six years, to expire on June 30, 2001.

Thereafter, at the expiration of each stipulated term of office all appointments made by the governor shall be for a term of six years.

The members of the Authority appointed by the Governor shall be selected from the State-at-large and insofar as practicable shall represent each section of the State in all of the business, agriculture, and industrial interests of the State. Any vacancy occurring in the membership of the Authority appointed by the Governor shall be filled by the Governor for the unexpired term. The Governor may remove a member appointed by the Governor only for reasons provided by G.S. 143B-13.

The General Assembly shall appoint two persons to serve terms expiring June 30, 1983. The General Assembly shall appoint four persons to serve terms beginning July 1, 1983, to serve until June 30, 1985, and successors shall serve for two-year terms. Of the two appointments to be made in 1982, one shall be made upon the recommendation of the Speaker, and one shall be made upon the recommendation of the President of the Senate. Of the four appointments made in 1983 and biennially thereafter, two shall be made upon the recommendation of the President of the Senate, and two shall be made upon the recommendation of the Speaker. To stagger further the terms of members:

- (1) Of the members appointed upon the recommendation of the Speaker to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to

expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993;

- (2) Of the members appointed upon the recommendation of the President of the Senate to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993. Successors to these persons for terms beginning on or after January 1, 1997, shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

Thereafter, at the expiration of each stipulated term of office all appointments made by the General Assembly shall be for terms of two years.

Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Members appointed by the General Assembly may be removed only for reasons provided by G. S. 143B-13.

The Governor shall appoint from the members of the Authority the chairman and vice-chairman of the Authority. The members of the Authority shall appoint a treasurer and secretary of the Authority.

The Authority shall meet once in each 60 days at such regular meeting time as the Authority by rule may provide and at any place within the State as the Authority may provide, and shall also meet upon the call of its chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. The members of the Authority shall not be entitled to compensation for their services, but they shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5."

#### --SUBSTANCE ABUSE ADVISORY COUNCIL

Sec. 55. G.S. 143B-270(b) reads as rewritten:

"(b) The Council shall be composed of nine members. Three members shall be appointed by the Speaker of the House of Representatives, three members by the ~~Lieutenant Governor~~, President Pro Tempore of the Senate, and three members by the Governor. Of each set of three members, the appointing authority shall appoint one person who is a member of the recovering community, one other person who is a professional in the field of substance abuse services, and one other person who is a member of the public at large. Vacancies shall be filled by the office making the initial appointment and for the remainder of the unexpired term only. The Council shall elect its chairman annually."

#### --BOARD OF TRUSTEES OF THE TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN

Sec. 56. G.S. 135-39(d) reads as rewritten:

"(d) Three members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Of the initial members, two shall serve

terms expiring June 30, 1983, and one shall serve a term expiring June 30, 1984. Vacancies shall be filled in accordance with G.S. 120-122.

One of the members appointed by the General Assembly upon the recommendation of the President of the Senate for a term beginning July 1, 1985, shall be an employee enrolled in the Plan. Any successor to such member shall also be an employee enrolled in the Plan."

#### --BOARD OF TRUSTEES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM

Sec. 57. G.S. 135-6(b) reads as rewritten:

"(b) Membership of Board: Terms. -- The Board shall consist of 14 members, as follows:

- (1) The State Treasurer, ex officio;
- (2) The Superintendent of Public Instruction, ex officio;
- (3) Ten members to be appointed by the Governor and confirmed by the Senate of North Carolina. One of the appointive members shall be a member of the teaching profession of the State; one of the appointive members shall be an employee of the Board of Transportation, who shall be appointed by the Governor for a term of four years commencing April 1, 1947, and quadrennially thereafter; one of the appointive members shall be a representative of higher education appointed by the Governor for a term of four years commencing July 1, 1969, and quadrennially thereafter; one of the appointive members shall be a retired teacher who is drawing a retirement allowance, appointed by the Governor for a term of four years commencing July 1, 1969, and quadrennially thereafter; one shall be a retired State employee who is drawing a retirement allowance, appointed by the Governor for a term of four years commencing July 1, 1977, and quadrennially thereafter; one to be a general State employee, and three who are not members of the teaching profession or State employees: two to be appointed for a term of two years, two for a term of three years and one for a term of four years; one appointive member shall be a law-enforcement officer employed by the State, appointed by the Governor, for a term of four years commencing April 1, 1985. At the expiration of these terms of office the appointment shall be for a term of four years;
- (4) Two members appointed by the General Assembly, one appointed upon the recommendation of the Speaker of the House of Representatives, and one appointed upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Neither of these members may be an active or retired teacher or State employee or an employee of a unit of local government. The initial members appointed by the General Assembly shall serve for terms expiring June 30, 1983. Thereafter, their successors shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122."



## --NORTH CAROLINA TEACHING FELLOWS COMMISSION

**Sec. 58.** G.S. 115C-363.23(a) reads as rewritten:

"(a) The Commission shall consist of 11 nonlegislative members as follows:

- (1) The Chairman of the State Board of Education, or his designee;
- (2) The Lieutenant Governor, or his designee;
- (3) Three persons appointed by the Governor;
- (4) Three persons appointed by the General Assembly on the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121; and
- (5) Three persons appointed by the General Assembly on the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

Terms of commission members appointed under this section expire on June 30 of the year of expiration. In 1990, three members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one for a term to expire June 30, 1992, one for a term to expire June 30, 1993, and one for a term to expire June 30, 1994. In 1990, three members shall be appointed by the General Assembly upon the recommendation of the President of the Senate, one for a term to expire June 30, 1991, one for a term to expire June 30, 1992, and one for a term to expire June 30, 1993. In 1990, three members shall be appointed by the Governor, one for a term to expire June 30, 1992, one for a term to expire June 30, 1993, and one for a term to expire June 30, 1994. Subsequent appointments are for a term of four years."

## --STATE BOARD OF THERAPEUTIC RECREATION CERTIFICATION

**Sec. 59.** G.S. 90C-5(b) reads as rewritten:

"(b) Composition. -- The Board shall consist of seven members appointed as follows:

- (1) Three practicing therapeutic recreation specialists, one each appointed by the Governor, the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and the General Assembly upon the recommendation of the Speaker of the House of Representatives;
- (2) One therapeutic recreation specialist who is engaged primarily in providing training for therapeutic recreation specialists or therapeutic recreation assistants and one therapeutic recreation assistant, each appointed by the Governor; and
- (3) Two public members, one appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate and one appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

The Governor shall make his initial appointments after consultation with the North Carolina Recreation and Park Society and other interested persons and thereafter shall make his appointments after consultation with the Board."

## --BOARD OF TRANSPORTATION

**Sec. 60.** G.S. 143B-350(d) reads as rewritten:

"(d) The Board of Transportation shall have two members appointed by the General Assembly. One of these members shall be appointed upon the recommendation of the Speaker of the House of Representatives, and one shall be appointed upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The initial members appointed by the General Assembly shall serve for terms expiring June 30, 1983. Thereafter, their successors shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122."

**--BOARD OF TRUSTEES OF THE UNIVERSITY OF NORTH CAROLINA CENTER FOR PUBLIC TELEVISION**

**Sec. 61.** G.S. 116-37.1(b)(1) reads as rewritten:

"(1) The Board of Trustees of the University of North Carolina Center for Public Television shall be composed of the following membership: 11 persons appointed by the Board of Governors; four persons appointed by the Governor; two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives, and one upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121; and ex officio, the Secretary of the Department of Cultural Resources, the Secretary of the Department of Human Resources, the Superintendent of Public Instruction, the President of the Community College System, and the President of the University of North Carolina. In making initial appointments to the Board of Trustees, the Board of Governors shall designate six persons for two-year terms and five persons for four-year terms, and the Governor shall designate two persons for two-year terms and two persons for four-year terms. The initial members appointed to the Board of Trustees by the General Assembly shall serve for terms expiring June 30, 1983, and notwithstanding anything else in this section, their successors shall be appointed in 1983 and biennially thereafter for two-year terms. Thereafter, the term of office of appointed members of the Board of Trustees of the Center shall be four years. In making appointments to the Board of Trustees the appointing authorities shall give consideration to promoting diversity among the membership, to the end that, in meeting the responsibilities delegated to it, the Board of Trustees will reflect and be responsive to the diverse needs, interests, and concerns of the citizens of North Carolina."

**--VETERANS' MEMORIAL COMMISSION**

**Sec. 62.** G.S. 143B-133(b) reads as rewritten:

"(b) The Veterans' Memorial Commission shall consist of 15 members, none of whom shall be members of the North Carolina General Assembly. The appointments shall be made as follows:

- (1) Five persons shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- (2) Five persons shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
- (3) Five persons shall be appointed by the Governor.

Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Other vacancies in appointive terms shall be filled by appointment by the Governor."

#### --BOARD OF DIRECTORS OF THE NORTH CAROLINA ARBORETUM

Sec. 63. G.S. 116-243 reads as rewritten:

" § 116-243. *Board of directors established; appointments.*

A board of directors to govern the operation of the Arboretum is established, to be appointed as follows:

- (1) Two by the Governor, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms;
- (2) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the President Pro Tempore of the Senate, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms;
- (3) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the Speaker of the House of Representatives, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms;
- (4) The President of The University of North Carolina or his designee to serve ex officio;
- (5) The chancellors, chief executive officers, or their designees of the following institutions of higher education: North Carolina State University, Western Carolina University, The University of North Carolina at Asheville, Mars Hill College, and Warren Wilson College, to serve ex officio;
- (6) The President of Western North Carolina Arboretum, Inc., to serve ex officio;
- (7) Six by the Board of Governors of The University of North Carolina, initially, three for one-year terms, and three for three-year terms. Successors shall be appointed for four-year terms. One shall be an active grower of nursery stock, and one other shall represent the State's garden clubs;
- (8) The executive director of the Arboretum and the Executive Vice President of Western North Carolina Development Association shall serve ex officio as nonvoting members of the board of directors.

All appointed members may serve two full four-year terms following the initial appointment and then may not be reappointed until they have been absent for at least four years. Members serve until their successors have been appointed. Appointees to fill vacancies serve for the remainder of the

unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Initial terms begin July 1, 1986.

The chairman of the board of directors shall be elected biennially by majority vote of the directors.

The executive director of the Arboretum shall report to the board of directors."

#### --WILDLIFE RESOURCES COMMISSION

**Sec. 64.** G.S. 143-241 reads as rewritten:

*"§ 143-241. Appointment and terms of office of Commission members; filling of vacancies.*

The members of the North Carolina Wildlife Resources Commission shall be appointed as follows:

The Governor shall appoint one member each from the first, fourth, and seventh wildlife districts to serve six-year terms;

The Governor shall appoint one member each from the second, fifth, and eighth wildlife districts to serve two-year terms;

The Governor shall appoint one member each from the third, sixth, and ninth wildlife districts to serve four-year terms;

The Governor shall also appoint two at-large members to serve four-year terms.

The General Assembly shall appoint six members of the Commission to serve two-year terms, three upon the recommendation of the Speaker of the House, ~~one three~~ upon the recommendation of the ~~President of the Senate,~~ and ~~two upon the recommendation of the~~ President Pro Tempore of the Senate, in accordance with G.S. 120-121. Of the members appointed upon the recommendation of the Speaker of the House and upon the recommendation of the President Pro Tempore of the Senate, at least one of each shall be a member of the political party to which the largest minority of the members of the General Assembly belongs.

Thereafter as the terms of office of the members of the Commission appointed by the Governor from the several wildlife districts expire, their successors shall be appointed for terms of six years each. As the terms of office of the members of the Commission appointed by the General Assembly expire, their successors shall be appointed for terms of two years each. All members appointed by the Governor serve at the pleasure of the Governor that appointed them and they may be removed by that Governor at any time. A successor to the appointing Governor may remove a Commission member only for cause as provided in G.S. 143B-13. Members appointed by the General Assembly serve at the pleasure of that body and may be removed by law at any time. In the event that a Commission member is removed, the member appointed to replace the removed member shall serve only for the unexpired term of the removed member."

**Sec. 65.** This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began.

In the General Assembly read three times and ratified this the 27th day of July, 1995.

AN ACT TO CLARIFY THE QUALIFIED BUSINESS TAX CREDIT TO ELIMINATE AN UNINTENDED LOOPHOLE THAT ALLOWS DOUBLE CREDITS FOR THE SAME INVESTMENT AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE QUALIFIED BUSINESS TAX CREDIT.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 105-163.011(b1) reads as rewritten:

"(b1) Pass-Through Entities. -- This subsection does not apply to a pass-through entity that is a qualified grantee business, a qualified business venture, or a North Carolina Enterprise Corporation. Subject to the limitations provided in G.S. 105-163.012, a pass-through entity that purchases the equity securities or subordinated debt of a qualified grantee business, a qualified business venture, or a North Carolina Enterprise Corporation directly from the business or Corporation is eligible for a tax credit equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed a pass-through entity for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of another pass-through entity, may not exceed seven hundred fifty thousand dollars (\$750,000). The pass-through entity is not eligible for the credit for the year in which the investment by the pass-through entity is made but shall be eligible for the credit for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

Each individual who is an owner of a pass-through entity is allowed as a credit against the tax imposed by Division II of this Article for the taxable year an amount equal to the owner's allocated share of the credits for which the pass-through entity is eligible under this subsection. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000).

Each corporation that is an owner of a pass-through entity is allowed as a credit for the taxable year an amount equal to the corporation's allocated share of the tax credits for which the pass-through entity is eligible under this subsection as a result of the pass-through entity's investment in equity securities of a North Carolina Enterprise Corporation. The credit is allowed against one or more of the following taxes:

- (1) The income tax imposed by Division I of this Article.
- (2) The franchise tax imposed by G.S. 105-116, 105-120.2, and 105-122.
- (3) The gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-228.8.

The aggregate amount of credit allowed a corporation for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed seven hundred fifty thousand dollars (\$750,000).



If an owner's share of the pass-through entity's credit is limited due to the maximum allowable credit under this section for a taxable year or if a corporate owner is not eligible for the credit because the investment was not made in a North Carolina Enterprise Corporation, the pass-through entity and its owners may not reallocate the unused credit among the other owners."

**Sec. 2.** The Legislative Research Commission is authorized to study the qualified business investment tax credit provided in Division V of Article 4 of Chapter 105 of the General Statutes. The study may include consideration of how the law can be modified to better encourage venture capital investment in North Carolina, such as increasing the ceilings on credits, expanding the types of business that may qualify, and other modifications. The Commission may make an interim report of its findings and recommendations to the 1996 Session of the 1995 General Assembly and shall make a final report of its findings and recommendations to the 1997 General Assembly.

**Sec. 3.** Section 1 of this act is effective for taxable years beginning on or after January 1, 1995, but does not apply to investments made before August 1, 1995, or to investments made pursuant to commitments to invest entered into before August 1, 1995. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1995.

S.B. 691

## CHAPTER 492

### AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE PRESIDENT PRO TEMPORE OF THE SENATE.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the President Pro Tempore of the Senate; and

Whereas, the President Pro Tempore of the Senate has made recommendations; Now, therefore,

*The General Assembly of North Carolina enacts:*

**Section 1.** Janet Smith of Davie County is appointed to the Information Resource Management Commission for a term expiring June 30, 1999.

**Sec. 2.** Robert J. Reo of Alamance County is appointed to the Acupuncture Licensing Board for a three-year term expiring June 30, 1998.

**Sec. 3.** Charles A. Hayes of Guilford County is appointed to the North Carolina Global TransPark Authority Board of Directors for a term expiring June 30, 1997.

**Sec. 4.** Gary Stepp of Cherokee County (cochair), Terry Mitchell of Pasquotank County, Brenda Tinkam of Hertford County, and Fred Bartholomew of Johnston County are appointed to the Commission on School Technology for a term expiring June 30, 1997.

**Sec. 5.** Ben Berry of Pasquotank County is appointed to the Northeastern North Carolina Regional Economic Development Commission for a term expiring June 30, 1999.

**Sec. 6.** Durwood Batchelor of Wake County and Billy Glover of Harnett County are appointed to the North Carolina Manufactured Housing Board for a three-year term expiring September 30, 1998.

**Sec. 7.** Rick Gilstrap of Halifax County is appointed to the North Carolina Center for Nursing Board of Directors for a three-year term expiring June 30, 1998.

**Sec. 8.** Wanda Boyette of Sampson County is appointed to the North Carolina Nursing Scholars Commission for a term expiring June 30, 1999.

**Sec. 9.** Sue Anderson of Tyrrell County is appointed to the North Carolina Principals Fellows Commission for a term expiring June 30, 1999.

**Sec. 10.** Thomas Mehder of Mecklenburg County, Craig Morehead of Wake County, Bill Weatherspoon of Wake County, Anne Coan of Wake County, and Russ Stephenson of Wake County are appointed to the North Carolina Petroleum Underground Storage Tanks Fund Council for a term expiring June 30, 1997.

**Sec. 11.** Terry Wheeler of Dare County is appointed to the Property Tax Commission for a term expiring June 30, 1999.

**Sec. 12.** Wayne Loftin of New Hanover County and Danny Fore of Cumberland County are appointed to the Southeastern North Carolina Regional Economic Development Commission for a term expiring June 30, 1999.

**Sec. 13.** Lavonia Allison of Durham County and Joe A. Connolly of Buncombe County are appointed to the State Health Plan Purchasing Alliance Board for a term expiring July 1, 1999.

**Sec. 14.** Jerry Campbell of Lincoln County and Margaret Arbuckle of Guilford County are appointed to the Watershed Protection Advisory Council for a term expiring June 30, 1997.

**Sec. 15.** David P. Huskins of McDowell County and Juanita Dixon of Haywood County are appointed to the Western North Carolina Regional Economic Development Commission for a term expiring July 1, 1999.

**Sec. 16.** Russell Hull of Pasquotank County and Eugene Price of Wayne County are appointed to the Wildlife Resources Commission for a term expiring April 25, 1997.

**Sec. 16.1.** Ray Evans of Dare County is appointed to the Roanoke Island Commission for a term expiring on October 1, 1997.

**Sec. 16.2.** Shirley Mayo of Beaufort County is appointed to the Board of Directors of the North Carolina Center for Nursing for a term expiring on June 30, 1997.

**Sec. 16.3.** John Rich of Wake County is appointed to the North Carolina Board for Licensing of Soil Scientists for a term expiring on June 30, 1996.

**Sec. 16.4.** Kenneth C. Feagin of Henderson County and Thomas K. Jenkins of Macon County are appointed to the Western North Carolina Regional Economic Development Commission for terms expiring June 30, 1999.

**Sec. 16.5.** G. R. Kindley, Jr. of Richmond County is appointed to the Southeastern North Carolina Regional Economic Development Commission for a term effective August 1, 1995, and expiring on June 30, 1997.

**Sec. 16.6.** Clay Ferebee, III of Camden County is appointed to the Centennial Authority for a term expiring on June 30, 1997. George Daniel of Caswell County is appointed to the Centennial Authority for a term expiring on June 30, 1999. Wendell Murphy of Duplin County is appointed to the Centennial Authority for a term expiring on June 30, 1999. Reef C. Ivey, II of Wake County is appointed to the Centennial Authority for a term expiring on June 30, 1997.

**Sec. 17.** Unless otherwise specified, all appointments made by this act are for terms to begin upon ratification.

**Sec. 18.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1995.

S.B. 828

## CHAPTER 493

AN ACT TO MAKE APPOINTMENTS TO VARIOUS COMMISSIONS  
UPON THE RECOMMENDATION OF THE PRESIDENT OF THE  
SENATE.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the President of the Senate; and

Whereas, the President of the Senate has made recommendations; Now, therefore,

*The General Assembly of North Carolina enacts:*

**Section 1.** Richard Allen Holder of Lenoir County, Terry Boone of Northampton County, and Ray Womble, Jr., from Harnett County are appointed to The North Carolina Agricultural Finance Authority for a term expiring June 30, 1997.

**Sec. 2.** Guy John Phillips of Jackson County is appointed as a public member to the Alarm Systems Licensing Board for a term expiring June 30, 1998.

**Sec. 3.** Linda Murphy of Duplin County and The Honorable Terry Sanford of Durham County are appointed to the Board of Trustees of the North Carolina Museum of Art for terms to expire June 30, 1997.

**Sec. 4.** L. Glenn Orr of Forsyth County is appointed as a practical banker to the State Banking Commission for a term commencing upon ratification and expiring March 31, 1999.

**Sec. 5.** Etheridge Eugene "Gene" Alligood of Mecklenburg County as a practicing chiropractor is appointed to the State Board of Chiropractic Examiners for a term expiring June 30, 1998.

**Sec. 6.** Mark Donaldson of Chatham County is appointed to the Crime Victims Compensation Commission for a term expiring June 30, 1999.

**Sec. 7.** Lee Farmer of Caswell County is appointed to the North Carolina Criminal Justice Education and Training Standards Commission for a term expiring June 30, 1997.

**Sec. 8.** Rebekah Beerbower of Catawba County is appointed to the Child Day-Care Commission of the Department of Human Resources for a term expiring June 30, 1997 (categorical appointment of public member). Anita McCorkle of Mecklenburg County is appointed to the Child Day-Care Commission for a term expiring June 30, 1997 (categorical appointment of parent member).

**Sec. 9.** D. Steven Beam of Mecklenburg County is appointed to the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan for a term expiring June 30, 1997.

**Sec. 10.** Jason Reynolds of Wake County, John K. Gallaher of Forsyth County, and Jo Anne Jeffries of Brunswick County (categorical appointments for at-large members) are appointed to the Governor's Advocacy Council for Persons With Disabilities for a term expiring June 30, 1997. J. Michael Elder of Mecklenburg County is appointed to the Governor's Advocacy Council for Persons With Disabilities for a term expiring June 30, 1997 (categorical appointment for mental retardation). William M. Simpson of Burke County is appointed to the Governor's Advocacy Council for Persons With Disabilities for a term expiring June 30, 1997 (categorical appointment for sensory impaired). Richard Clark of Buncombe County is appointed to the Governor's Advocacy Council for Persons With Disabilities for a term expiring June 30, 1997 (categorical appointment for developmental disability). Paula Wilcenski of Wake County is appointed to the Governor's Advocacy Council for Persons With Disabilities for a term expiring (categorical appointment for mental illness).

**Sec. 11.** Robert Epting of Orange County is appointed to the Environmental Management Commission for a term expiring June 30, 1997. The Honorable Jeff Morse of Burke County is appointed to the Environmental Management Commission for a term expiring June 30, 1997.

**Sec. 12.** William M. Womble, Jr., of Lee County is appointed (categorical appointment for knowledge of savings and loan) to the Board of Directors of the North Carolina Housing Finance Agency for a term expiring June 30, 1999. Sheila A. Nader of Wake County is appointed as an at-large member to the Board of Directors of the North Carolina Housing Finance Agency for a term expiring June 30, 1999. William Earl Antone, Sr., of Robeson County is appointed as an at-large member to the Board of Directors of the North Carolina Housing Finance Agency for a term expiring June 30, 1997.

**Sec. 13.** Larry Marshal Townsend is appointed to the North Carolina State Commission on Indian Affairs for a term expiring June 30, 1997.

**Sec. 14.** Hugh C. Talton, Jr., of Carteret County is appointed to the Public Officers and Employees Liability Insurance Commission for a term expiring June 30, 1999.

**Sec. 15.** Mike O'Fohludha of Durham County and Nick Long of Vance County are appointed to the Low-Level Radioactive Waste Management Authority for terms expiring June 30, 1999.

**Sec. 16.** Joyce H. Elliott of Buncombe County is appointed to the Board of Trustees for the Teachers' and State Employees' Comprehensive Major Medical Plan (categorical appointment for an employee enrolled in the Plan) for a term expiring June 30, 1997. Dr. Jim Gibson of Lee County is appointed to the Board of Trustees for the Teachers' and State Employees' Comprehensive Major Medical Plan as a public member for a term expiring June 30, 1997.

**Sec. 17.** Dr. Sandra B. Greene of Durham County is appointed to the North Carolina Medical Database Commission for a term expiring June 30, 1998 (categorical appointment as representative of BCBS), and Dr. Michael Davidson of Mecklenburg County is appointed to the North Carolina Medical Database Commission for a term expiring June 30, 1998 (categorical appointment as representative of health care provider). Dean Debnam of Wake County is appointed to the North Carolina Medical Database Commission to fill the unexpired term of Anthony Copeland (which expires June 30, 1996).

**Sec. 18.** Patricia Ann Chamings of Guilford County and Helen Jernigan Poole of Wake County are appointed to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services for terms expiring June 30, 1997.

**Sec. 19.** Joselia Davis of New Hanover County is appointed to the Private Protective Services Board for a term expiring June 30, 1998.

**Sec. 20.** Wayne Lofton of New Hanover County is appointed to the North Carolina Board of Public Telecommunications for a term expiring June 30, 1997. Anthony "Tony" M. Copeland of Wake County is appointed to the Board of Public Telecommunications Commissioners for a term expiring June 30, 1997.

**Sec. 21.** John Cilley of Catawba County is appointed to the Board of Trustees of the Teachers' and State Employees' Retirement System for a term expiring June 30, 1997.

**Sec. 22.** Charles H. "Chuck" Henry, Jr., of Onslow County and The Honorable Philip O. Redwine of Wake County is appointed to the Rules Review Commission for terms expiring June 30, 1997.

**Sec. 23.** The Honorable Anderson "Andy" D. Cromer of Stokes County, Matt Wood of Pasquotank County, Dedrick Samuels of Davidson County, J. V. "Doe" Williams of Craven County and The Honorable Phil Feagin of Polk County are appointed to the Commission on School Facility Needs for terms expiring June 30, 1999.

**Sec. 24.** Carol Hughes of Mecklenburg County is appointed to the Board of Trustees of the North Carolina School of Science and Mathematics for a term expiring June 30, 1999.

**Sec. 25.** Dr. Larry Watson of Wake County is appointed to the North Carolina Board of Science and Technology for a term expiring June 30, 1997.

**Sec. 26.** Howard Russell Langley of Dare County is appointed to the North Carolina Seafood Industrial Park Authority for a term expiring June 30, 1997.



**Sec. 27.** Robert L. "Roddy" Jones, building contractor of Wake County, is appointed to the State Building Commission for a term expiring June 30, 1998.

**Sec. 28.** Stewart Coleman of Buncombe County is appointed to the North Carolina State Ports Authority for a term expiring June 30, 1997.

**Sec. 29.** Colleen Lanier of Forsyth County is appointed to the North Carolina Teaching Fellows Commission for a term expiring June 30, 1999.

**Sec. 30.** Beverly McCracken of Guilford County is appointed to the Board of Trustees of the University of North Carolina Center for Public Television for a term expiring June 30, 1997.

**Sec. 31.** Wayne M. Pollock, Recreation Therapist of Durham County is appointed to the North Carolina State Board of Therapeutic Recreation Certification for a term expiring June 30, 1998 (categorical appointment of recreation therapist).

**Sec. 32.** John Edward Pechmann of Cumberland County is appointed to the Wildlife Resources Commission for a term beginning upon ratification and expiring April 24, 1997.

**Sec. 32.1.** Peter A. Pappas of Mecklenburg County is appointed to the Board of Transportation for a term expiring June 30, 1997.

**Sec. 32.2.** The Honorable Richard Lee Frye of Alamance County is appointed to the North Carolina Sheriffs' Education and Training Standards Commission for a term expiring June 30, 1997.

**Sec. 33.** Except as provided otherwise, all terms under this act commence upon ratification of this act.

**Sec. 34.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1995.

H.B. 72

## CHAPTER 494

## AN ACT TO CRIMINALIZE INDECENT LIBERTIES BETWEEN CHILDREN.

*The General Assembly of North Carolina enacts:*

**Section 1.** Article 26 of Chapter 14 is amended by adding a new section to read:

"§ 14-202.2. *Indecent liberties between children.*

(a) A person who is under the age of 16 years is guilty of taking indecent liberties with children if the person either:

(1) Willfully takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex who is at least three years younger than the defendant for the purpose of arousing or gratifying sexual desire; or

(2) Willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of any child of either sex who is at least three years younger than the defendant for the purpose of arousing or gratifying sexual desire.

(b) Indecent liberties between minors is punishable as a Class 1 misdemeanor."

**Sec. 2.** This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 27th day of July, 1995.

H.B. 396

## CHAPTER 495

AN ACT TO MODIFY THE STATE PORTS TAX CREDIT BY EXPANDING IT TO INCLUDE IMPORTS, BY EXTENDING THE SUNSET ON THE CREDIT, AND BY LIMITING THE CREDIT FOR BULK EXPORTS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 105-130.41 reads as rewritten:

"§ 105-130.41. Credit for North Carolina State Ports Authority ~~wharfage and handling charges on exports, wharfage, handling, and throughput charges.~~

(a) Credit. -- A taxpayer ~~who is a~~ whose waterborne cargo owner utilizing the deep water docks at the Wilmington or Morehead City port for the movement of export cargo is loaded onto or unloaded from an ocean carrier calling at either the State-owned port terminal, terminal at Wilmington or Morehead City, without consideration of the free-on-board (FOB) terms under which the export cargo is moved, is allowed a credit against the tax imposed by this Division. The amount of credit allowed is equal to the excess of the wharfage, ~~handling in, handling (in or out), and through-put~~ throughput charges assessed on the cargo ~~owned by that cargo owner~~ for the current taxable year over an amount equal to the average of the charges for the current taxable year and the two preceding taxable years. The credit applies to break-bulk cargo, bulk cargo, cargo and container cargo cargo, including less-than-container load cargo, less-than-container-load cargo, that is loaded onto or unloaded from an ocean carrier calling at either the Wilmington or Morehead City port terminal and to bulk cargo that is loaded onto or unloaded from an ocean carrier calling at the Morehead City port terminal. To obtain the credit, taxpayers must provide to the Secretary a statement from the State Ports Authority certifying the amount of charges for which a credit is claimed and any other information required by the Secretary.

(b) Limitations. -- This credit may not exceed fifty percent (50%) of the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except tax payments made by or on behalf of the corporation. Any unused portion of the credit may be carried forward for the succeeding five years. The maximum cumulative credit that may be claimed by a corporation under this section is one million dollars (\$1,000,000).

(c) Definitions. -- For purposes of this section, the terms "~~handling in~~" 'handling' (in or out) and 'wharfage' have the meanings provided in the State Ports Tariff Publications, 'Wilmington Tariff, Terminal Tariff #6,' and 'Morehead City Tariff, Terminal Tariff #1.' For purposes of this section, the term ~~through-put~~ 'throughput' has the same meaning as 'wharfage' but applies only to bulk products, both dry and liquid."

**Sec. 2.** G.S. 105-151.22 reads as rewritten:

"§ 105-151.22. Credit for North Carolina State Ports Authority ~~wharfage and handling charges on exports, wharfage, handling, and throughput charges.~~

(a) Credit. -- A taxpayer ~~who is a~~ whose waterborne cargo owner utilizing the deep water docks at the Wilmington or Morehead City port for the movement of export cargo is loaded onto or unloaded from an ocean carrier calling at either the State-owned port terminal, terminal at Wilmington or Morehead City, without consideration of the free-on-board (FOB) terms under which the export cargo is moved, is allowed a credit against the tax imposed by this Division. The amount of credit allowed is equal to the excess of the wharfage, ~~handling in, handling (in or out), and through-put~~ throughput charges assessed on the cargo owned by that cargo owner for the current taxable year over an amount equal to the average of the charges for the current taxable year and the two preceding taxable years. The credit applies to break-bulk cargo, bulk cargo, cargo and container cargo cargo, including less-than-container load cargo, less-than-container-load cargo, that is loaded onto or unloaded from an ocean carrier calling at either the Wilmington or Morehead City port terminal and to bulk cargo that is loaded onto or unloaded from an ocean carrier calling at the Morehead City port terminal. To obtain the credit, taxpayers must provide to the Secretary a statement from the State Ports Authority certifying the amount of charges for which a credit is claimed and any other information required by the Secretary.

(b) Limitations. -- This credit may not exceed fifty percent (50%) of the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except tax payments made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding five years. The maximum cumulative credit that may be claimed by a taxpayer under this section is one million dollars (\$1,000,000).

(c) Definitions. -- For purposes of this section, the terms "handling in" 'handling' (in or out) and 'wharfage' have the meanings provided in the State Ports Tariff Publications, 'Wilmington Tariff, Terminal Tariff #6,' and 'Morehead City Tariff, Terminal Tariff #1.' For purposes of this section, the term ~~'through-put'~~ 'throughput' has the same meaning as 'wharfage' but applies only to bulk products, both dry and liquid."

Sec. 3. Section 4 of Chapter 977 of the 1991 Session Laws reads as rewritten:

"Sec. 4. This act is effective for taxable years beginning on or after March 1, 1992, and ending on or before February 28, ~~1996,~~ 1998."

Sec. 4. Section 4 of Chapter 681 of the 1993 Session Laws, as amended by Section 17 of Chapter 17 of the 1995 Session Laws, reads as rewritten:

"Sec. 4. This act is effective for taxable years beginning on or after January 1, 1994, and ending on or before February 28, ~~1996,~~ 1998."

Sec. 5. Section 3 of Chapter 977 of the 1991 Session Laws reads as rewritten:

"Sec. 3. The North Carolina State Ports Authority shall report annually to the General Assembly regarding the impact of ~~this act~~ the income tax credit enacted by this act on shipping and economic growth. Each report shall show the overall annual increase in shipping at each State port affected

~~by this act~~ for the most recent year for which data is available and for each of the previous 10 years. Each report shall estimate the number of jobs created at each port and in businesses related to port activity at each port since January 1, 1992, as compared to the number of similar jobs created during the 10 years preceding January 1, 1992. Each report shall state the net economic impact on the State as a result of the allowance of ~~tax credits under this act~~, the tax credit. Each report shall include the number of persons using the tax credit who have stopped, or are likely to stop, using a North Carolina port when the credit expires and to then use a port in another state. The Ports Authority shall file a report on May 1 of 1993, 1994, and 1995, 1996, and 1997 by submitting a copy to the Fiscal Research Division and five copies to the Legislative library. ~~Speaker of the House of Representatives and the President Pro Tempore of the Senate.~~ The Department of Revenue and the Department of Economic and Community Development shall cooperate with the Ports Authority in providing the information required in the annual reports."

**Sec. 6.** This act is effective for taxable years beginning on or after January 1, 1995.

In the General Assembly read three times and ratified this the 27th day of July, 1995.

H.B. 458

## CHAPTER 496

### AN ACT TO IMPOSE CONDITIONS FOR THE RESTORATION OF A DRIVERS LICENSE AFTER A CONVICTION FOR CERTAIN ALCOHOL-RELATED DRIVING OFFENSES AND TO PROMOTE COMPLIANCE WITH THESE CONDITIONS.

*The General Assembly of North Carolina enacts:*

**Section 1.** Article 2 of Chapter 20 of the General Statutes is amended by adding the following new sections to read:

"§ 20-17.6. Restoration of a license after a conviction of driving while impaired or driving while a provisional licensee after consuming alcohol or drugs.

(a) Scope. -- This section applies to a person whose license was revoked as a result of a conviction of any of the following offenses:

- (1) G.S. 20-138.1, driving while impaired (DWI).
- (2) G.S. 20-138.2, commercial DWI, if the person's license was revoked under G.S. 20-17(2).
- (3) G.S. 20-138.3, driving while a provisional licensee after consuming alcohol or drugs.

(b) Requirement for Restoring License. -- The Division must receive a certificate of completion for a person who is subject to this section before the Division can restore that person's license. The revocation period for a person who is subject to this section is extended until the Division receives the certificate of completion.

(c) Certificate of Completion. -- To obtain a certificate of completion, a person must have a substance abuse assessment and, depending on the results of the assessment, must complete either an alcohol and drug



education traffic (ADET) school or a substance abuse treatment program. The substance abuse assessment must be conducted by one of the entities authorized by the Department of Human Resources to conduct assessments. G.S. 122C-142.1 describes the procedure for obtaining a certificate of completion.

(d) Notice of Requirement. -- When a court reports to the Division a conviction of a person who is subject to this section, the Division must send the person written notice of the requirements of this section and of the consequences of failing to comply with these requirements. The notification must include a statement that the person may contact the local area mental health, developmental disabilities, and substance abuse program for a list of agencies and entities in the person's area that are authorized to make a substance abuse assessment and provide the education or treatment needed to obtain a certificate of completion.

(e) Effect on Limited Driving Privileges. -- A person who is subject to this section is not eligible for limited driving privileges if the revocation period for the offense that caused the person to become subject to this section has ended and the person's license remains revoked only because the Division has not obtained a certificate of completion for that person. The issuance of limited driving privileges during the revocation period for the offense that caused the person to become subject to this section is governed by the statutes that apply to that offense."

**Sec. 2.** G.S. 20-179(m), 20-179(r)(2), and 20-179(t) are repealed.

**Sec. 3.** G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. -- A defendant subject to Level One punishment may be fined up to two thousand dollars (\$2,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 14 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed (i) to require the defendant to serve a term of imprisonment of at least 14 days, or (ii) to require the defendant to serve a term of imprisonment of at least four consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above. If the defendant is placed on probation, the judge ~~must, if required by subsection (m), impose the conditions relating to assessment, treatment, and education described in that subsection.~~ may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge may impose any other lawful condition of probation. If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so."

**Sec. 4.** G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. -- A defendant subject to Level Two punishment may be fined up to one thousand dollars (\$1,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special



probation is imposed (i) to require the defendant to serve a term of imprisonment of at least seven days or, (ii) to require the defendant to serve a term of imprisonment of at least two consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above. If the defendant is placed on probation, the judge ~~must, if required by subsection (m), impose the conditions relating to assessment, treatment, and education described in that subsection, may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license.~~ The judge may impose any other lawful condition of probation. ~~If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so."~~

Sec. 5. G.S. 20-179(i) reads as rewritten:

"(i) Level Three Punishment. -- A defendant subject to Level Three punishment may be fined up to five hundred dollars (\$500.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment must be suspended, on the condition that the defendant:

- (1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or
- (2) Perform community service for a term of at least 72 hours; or
- (3) Not operate a motor vehicle for a term of at least 90 days; or
- (4) Any combination of these conditions.

If the defendant is placed on probation, the judge may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge in his discretion may impose any other lawful condition of probation and, if required by subsection (m), must impose the conditions relating to assessment, treatment, and education described in that subsection, probation. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c)."

Sec. 6. G.S. 20-179(j) reads as rewritten:

"(j) Level Four Punishment. -- A defendant subject to Level Four punishment may be fined up to two hundred fifty dollars (\$250.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment must be suspended, on the condition that the defendant:

- (1) Be imprisoned for a term of 48 hours as a condition of special probation; or
- (2) Perform community service for a term of 48 hours; or
- (3) Not operate a motor vehicle for a term of 60 days; or
- (4) Any combination of these conditions.

If the defendant is placed on probation, the judge may impose a requirement that the defendant obtain a substance abuse assessment and the

education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge in his discretion may impose any other lawful condition of probation and, if required by subsection (m), must impose the conditions relating to assessment, treatment, and education described in that subsection, probation. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c)."

**Sec. 7.** G.S. 20-179(k) reads as rewritten:

"(k) Level Five Punishment. -- A defendant subject to Level Five punishment may be fined up to one hundred dollars (\$100.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment must be suspended, on the condition that the defendant:

- (1) Be imprisoned for a term of 24 hours as a condition of special probation; or
- (2) Perform community service for a term of 24 hours; or
- (3) Not operate a motor vehicle for a term of 30 days; or
- (4) Any combination of these conditions.

If the defendant is placed on probation, the judge may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge may in his discretion impose any other lawful condition of probation and, if required by subsection (m), must impose the conditions relating to assessment, treatment, and education described in that subsection, probation. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c)."

**Sec. 8.** G.S. 20-179.2 is repealed.

**Sec. 9.** G.S. 20-179.4(c) reads as rewritten:

"(c) A fee of one hundred dollars (\$100.00) must be paid by all persons serving a community service sentence. That fee must be paid to the clerk of court in the county in which the person is convicted. The fee must be paid in full within two weeks unless the court, upon a showing of hardship by the person, allows ~~him~~ additional time to pay the fee. The person may not be required to pay the fee before ~~he begins~~ beginning the community service unless the court specifically orders that ~~he the person~~ the person to do so. ~~If the person is also ordered to attend an Alcohol and Drug Education Traffic School established pursuant to G.S. 20-179.2, the fee for supervision of community service punishment is fifty dollars (\$50.00).~~"

**Sec. 10.** Part 4 of Article 4 of Chapter 122C of the General Statutes is amended by adding a new section to read:

"§ 122C-142.1. Substance abuse services for those convicted of driving while impaired or driving while a provisional licensee after consuming alcohol or drugs.

(a) Services. -- An area authority shall provide, directly or by contract, the substance abuse services needed by a person to obtain a certificate of completion required under G.S. 20-17.6 as a condition for the restoration of a drivers license. A person may obtain the required services from an area

facility, from a private facility that has complied with this subsection, or, with the approval of the Department, from an agency that is located in another state. Before a private facility located in this State provides the substance abuse services needed by a person to obtain a certificate of completion, the facility shall notify both the designated area facility for the catchment area in which it is located and the Department of its intent to provide the services and shall agree to comply with the laws and rules concerning these services that apply to area facilities.

(b) Assessments. -- To conduct a substance abuse assessment, a facility shall give a client a standardized test approved by the Department to determine chemical dependency and shall conduct a clinical interview with the client. Based on the assessment, the facility shall recommend that the client either attend an alcohol and drug education traffic (ADET) school or obtain treatment. A recommendation shall be reviewed and signed by a certified alcoholism, drug abuse, or substance abuse counselor, as defined by the Commission, a Certified Substance Abuse Counselor, or by a physician certified by the American Society of Addiction Medicine (ASAM).

(c) School or Treatment. -- Attendance at an ADET school is required if none of the following applies and completion of a treatment program is required if any of the following applies:

- (1) The person took a chemical test at the time of the offense that caused the person's license to be revoked and the test revealed that the person had an alcohol concentration at any relevant time after driving of at least 0.15.
- (2) The person has a prior conviction of an offense involving impaired driving.
- (3) The substance abuse assessment identifies a substance abuse disability.

(d) Standards. -- An ADET school shall offer the curriculum established by the Commission and shall comply with the rules adopted by the Commission. A substance abuse treatment program offered to a person who needs the program to obtain a certificate of completion shall comply with the rules adopted by the Commission.

(e) Certificate of Completion. -- Any facility that issues a certificate of completion shall forward the original certificate of completion to the Department. The Department shall review the certificate of completion for accuracy and completeness. If the Department finds the certificate of completion to be accurate and complete, the Department shall forward it to the Division of Motor Vehicles of the Department of Transportation. If the Department finds the certificate of completion is not accurate or complete, the Department shall return the certificate of completion to the area facility for appropriate action.

(f) Fees. -- A person who has a substance abuse assessment conducted for the purpose of obtaining a certificate of completion shall pay to the assessing agency a fee of fifty dollars (\$50.00). A person shall pay to a treatment facility or school a fee of seventy-five dollars (\$75.00). If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar (\$75.00) fee.

A facility that provides to a person who is required to obtain a certificate of completion a substance abuse assessment, an ADET school, or a substance abuse treatment program may require the person to pay a fee required by this subsection before it issues a certificate of completion. As stated in G.S. 122C-146, however, an area facility may not deny a service to a person because the person is unable to pay.

An area facility shall remit to the Department five percent (5%) of each fee paid to the area facility under this subsection by a person who attends an ADET school conducted by the area facility. The Department may use amounts remitted to it under this subsection only to support, evaluate, and administer ADET schools.

(g) Out-of-State Services. -- A person may obtain a substance abuse service needed to obtain a certificate of completion from a provider located in another state if the service offered by that provider is substantially similar to the service offered by a provider located in this State. A person who obtains a service from a provider located in another state is responsible for paying any fees imposed by the provider.

(h) Rules. -- The Commission may adopt rules to implement this section. In developing rules for determining when a person needs to be placed in a substance abuse treatment program, the Commission shall consider diagnostic criteria such as those contained in the most recent revision of the Diagnostic and Statistical Manual or used by the American Society of Addiction Medicine (ASAM).

(i) Report. -- The Department shall submit an annual report on substance abuse assessments to the Joint Legislative Commission on Governmental Operations. The report is due by February 1. Each facility that provides services needed by a person to obtain a certificate of completion shall file an annual report with the Department by October 1 that contains the information the Department needs to compile the report the Department is required to submit under this section.

The report submitted to the Joint Legislative Commission on Governmental Operations shall include all of the following information and any other information requested by that Commission:

- (1) The number of persons required to obtain a certificate of completion during the previous fiscal year as a condition of restoring the person's drivers license under G.S. 20-17.6.
- (2) The number of substance abuse assessments conducted during the previous fiscal year for the purpose of obtaining a certificate of completion.
- (3) Of the number of assessments reported under subdivision (2) of this subsection, the number recommending attendance at an ADET school, the number recommending treatment, and, for those recommending treatment, the level of treatment recommended.
- (4) Of the number of persons recommended for an ADET school or treatment under subdivision (3) of this subsection, the number who completed the school or treatment.
- (5) The number of substance abuse assessments conducted by each facility and, of these assessments, the number that recommended



attendance at an ADET school and the number that recommended treatment.

- (6) The fees paid to a facility for providing services for persons to obtain a certificate of completion and the facility's costs in providing those services."

**Sec. 11.** The catch line to G.S. 20-17.6, as enacted by this act, reads as rewritten:

"§ 20-17.6. *Restoration of a license after a conviction of driving while impaired or driving while ~~a provisional licensee~~ less than 21 years old after consuming alcohol or drugs.*"

**Sec. 12.** G.S. 20-17.6(a), as enacted by this act, reads as rewritten:

"(a) Scope. -- This section applies to a person whose license was revoked as a result of a conviction of any of the following offenses:

- (1) G.S. 20-138.1, driving while impaired (DWI).
- (2) G.S. 20-138.2, commercial DWI, if the person's license was revoked under G.S. 20-17(2).
- (3) G.S. 20-138.3, driving while ~~a provisional licensee~~ less than 21 years old after consuming alcohol or drugs."

**Sec. 13.** The catch line to G.S. 122C-142.1, as enacted by this act, reads as rewritten:

"§ 122C-142.1. *Substance abuse services for those convicted of driving while impaired or driving while ~~a provisional licensee~~ less than 21 years old after consuming alcohol or drugs.*"

**Sec. 13.1.** (a) Section 12.1 of Chapter 466 of the 1995 Session Laws is repealed.

(b) This section is effective upon ratification.

**Sec. 14.** This act becomes effective January 1, 1996, and applies to offenses occurring on or after that date. Sections 11, 12, and 13 of this act become effective only if House Bill 353 of the 1995 General Assembly, AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF GOVERNOR'S TASK FORCE ON DRIVING WHILE IMPAIRED, is enacted.

In the General Assembly read three times and ratified this the 27th day of July, 1995.

S.B. 140

## CHAPTER 497

AN ACT TO CLARIFY THE PURPOSE FOR A MOMENT OF SILENCE IN THE PUBLIC SCHOOLS AND TO PROHIBIT LOCAL BOARDS OF EDUCATION FROM ADOPTING POLICIES THAT DENY CERTAIN FIRST AMENDMENT RIGHTS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 115C-47(29) reads as rewritten:

- "(29) To Authorize the Observance of a Moment of Silence. -- ~~Local boards of education may~~ To afford students and teachers a moment of quiet reflection at the beginning of each day in the public schools, to create a boundary between school time and nonschool time, and to set a tone of decorum in the classroom that will be conducive to discipline and learning, each local



board of education may adopt ~~policies~~ a policy to authorize the observance of a moment of silence at the commencement of the first class of each day in all grades in the public schools. Such a policy shall provide that the teacher in charge of the room in which each class is held may announce that a period of silence not to exceed one minute in duration shall be observed and that during that period silence shall be maintained and no one may engage in any other activities. Such period of silence shall be totally and completely unstructured and free of guidance or influence of any kind from any sources."

Sec. 2. G.S. 115C-47 is amended by adding a new subdivision to read:

"(29b) To Ensure Freedom of Religion. -- No local board of education shall have a policy of denying, or that effectively prevents participation in, prayer in public schools by individuals on a voluntary basis, except when necessary to maintain order and discipline. No local board of education shall encourage or require any person to participate in prayer or influence the form or content of any prayer in public schools. This subdivision shall not be construed to direct any local board of education to take any action in violation of the Constitutions of North Carolina or the United States."

Sec. 3. This act applies to all school years beginning with the 1995-96 school year.

In the General Assembly read three times and ratified this the 27th day of July, 1995.

S.B. 742

## CHAPTER 498

### AN ACT TO AUTHORIZE THE SECRETARY OF THE DEPARTMENT OF HUMAN RESOURCES TO INVESTIGATE THE DEATHS OF CERTAIN THOMAS S. CLASS MEMBERS.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 122C-112(a) is amended by adding a new subdivision to read:

"(14) Upon the death of any prospective or confirmed Thomas S. class member as identified in Thomas S. et al. vs. Britt, (C-C-82-0418-M, Western District) not residing in a State facility listed in G.S. 122C-181, investigate the circumstances leading to that death. The investigation shall analyze any unusual circumstances relating to the death. The Secretary shall adopt rules to implement this subsection. The Secretary shall have access to all medical records, hospital records, and records maintained by the State, any county, or any local agency necessary to carry out the purposes of this subsection, including police investigations data, medical examiner investigative data, health records, mental health records, and social services records."

**Sec. 2.** This act is effective upon ratification and applies to deaths occurring on or after this date.

In the General Assembly read three times and ratified this the 27th day of July, 1995.

H.B. 555

## CHAPTER 499

## AN ACT TO CREATE A NORTH CAROLINA BOXING COMMISSION.

*The General Assembly of North Carolina enacts:*

**Section 1.** Chapter 143 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 68.

"North Carolina State Boxing Commission.

" § 143-650. Legislative findings and declarations.

The General Assembly finds and declares to be the public policy of this State that it is in the best interest of the public and of boxing that boxing should be subject to an effective and efficient system of strict control and regulation in order to:

- (1) Protect the safety and well-being of participants in boxing; and
- (2) Promote the public confidence and trust in the regulatory process and the conduct of boxing.

To further the public confidence and trust, the provisions of this Article are designed to regulate all persons, practices, and associations related to the operation of any live boxing event, performance, or contest held in North Carolina.

" § 143-651. Definitions.

As used in this Article:

- (1) 'Amateur' means a person who has never received or competed for any purse or other article or thing of value for participating in a match.
- (2) 'Announcer' means any person who engages in the act of announcing a boxing match.
- (3) 'Boxer' means any person who engages as a participant in a boxing match.
- (4) 'Boxing match' means a match where the participants engage in the use of boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or technical knockout (TKO), and shall include kickboxing matches as defined in this section.
- (5) 'Commission' means the North Carolina State Boxing Commission.
- (6) 'Contest' means a boxing match in which the participants strive earnestly to win.
- (7) 'Contestant' means any person who engages as a participant in a boxing match.
- (8) 'Exhibition' means a boxing match where the participants display their boxing skills and technique without necessarily striving to win.

- (9) 'Judge' means a person who has a vote in determining the winner of any match or contest.
- (10) 'Kickboxer' means any person who engages as a participant in a kickboxing match.
- (11) 'Kickboxing match' means a match in which the participants engage in martial arts fighting techniques using the hands and the feet, and where the object of the match is to win by decision, knockout (KO), or technical knockout (TKO).
- (12) 'Licensee' means any person, club, corporation, organization, or association to whom a license has been issued pursuant to the provisions of this Article.
- (13) 'Manager' means any person, including an officer of a corporate manager and a managing partner of a partnership manager, who controls or administers the boxing affairs of any contestant, and who:
  - a. By contract, agreement, or other arrangement with any person undertakes or has undertaken to represent in any way the interest of the contestant in any professional boxing contest in which the boxer is to participate as a contestant, and is entitled under that contract, agreement, or arrangement to receive monetary or other compensation for his services, without regard to the sources of the compensation, except that the term 'manager' shall not be construed to mean any attorney licensed to practice in this State whose participation in the activities is restricted solely to his representing the interests of a professional boxer as his client;
  - b. Directs or controls the professional boxing activities of any professional boxer; or
  - c. Receives or is entitled to receive a percentage of the gross purse or gross income of any professional boxing contest.
- (14) 'Match' means any boxing contest or exhibition, and includes any event, engagement, sparring or practice session, show or program where the public is admitted and in which there is intended to be physical contact, whether an exhibition or contest. This definition does not include training or practice sessions when no admission is charged.
- (15) 'Matchmaker' means a person through whom matches are arranged for participants and who otherwise assists participants in procuring engagement dates for boxing.
- (16) 'Natural person' means an individual.
- (17) 'Participant' means any person who engages in a match or exhibition and performs as a boxer.
- (18) 'Person' means an individual, group of individuals, business, corporation, partnership, or any other individual or collective entity.
- (19) 'Physician' means an individual licensed to practice medicine in this State.

- (20) 'Professional' means any person who has received or competed for any purse or other article or thing of value for participating in a boxing match.
- (21) 'Promoter' means any person, including an officer of a corporate promoter and a managing partner of a partnership promoter, who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.
- (22) 'Referee' means the official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.
- (23) 'Ring official' means any person who performs an official function for the duration of a match.
- (24) 'Second' means any person who will work or be present in the corner of a participant for the duration of a match.
- (25) 'Timekeeper' means any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.
- (26) 'Ultimate warrior match' means a match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article.

" § 143-652. State Boxing Commission.

(a) Creation. -- The North Carolina State Boxing Commission is created within the Department of the Secretary of State to regulate live boxing matches, whether professional or amateur, in North Carolina. The Commission shall consist of five voting members and two advisory members. All the members shall be residents of North Carolina. The members shall be appointed as follows:

- (1) One voting member shall be appointed by the Governor for an initial term of two years.
- (2) One voting member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121.
- (3) One voting member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year.
- (4) Two voting members shall be appointed by the Secretary of State. One shall serve for an initial term of three years, and the other shall serve for an initial term of two years.
- (5) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.
- (6) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore

of the Senate for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

The two nonvoting advisory members shall advise the Commission on matters concerning the health and physical condition of boxers and health issues relating to the conduct of exhibitions and boxing matches. They may prepare and submit to the Commission for its consideration and approval any rules that in their judgment will safeguard the physical welfare of all participants engaged in boxing.

Terms for all members of the Commission except for the initial appointments shall be for three years.

The Secretary of State shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the Secretary of State for cause. Each member before entering upon the duties of a member shall take and subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Department of the Secretary of State.

(b) Vacancies. -- Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment. Vacancies for members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. A vacancy in the membership of the Commission other than by expiration of term shall be filled for the unexpired term only.

(c) Meetings. -- Meetings of the Commission shall be called by the chair or by any two members of the Commission, and meetings shall be held at least quarterly. Any three members of the Commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the Commission at any meeting by the affirmative vote of a majority of the members of the Commission present at a meeting at which a quorum exists. Any or all members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in the meeting by this means is deemed to be present in person at the meeting.

(d) Rule-Making Authority of the Commission. -- The Commission shall have the exclusive authority to issue rules for the regulation of the conduct, promotion, and performances of live boxing matches and exhibitions in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

- (1) Requirements for issuance of licenses and permits required by this Article.
- (2) Regulation of ticket sales.
- (3) Physical requirements for contestants, including classification by weight and skill.



- (4) Supervision of matches and exhibitions by licensed physicians and referees.
- (5) Insurance and bonding requirements.
- (6) Compensation of participants and licensees.
- (7) Contracts and financial arrangements.
- (8) Prohibition of dishonest, unethical, and injurious practices.
- (9) Facilities.

(e) Compensation. -- None of the members of the Commission shall receive compensation for serving on the Commission. However, members of the Commission may be reimbursed for their expenses in accordance with the provisions of Chapter 138 of the General Statutes.

(f) Staff Assistance. -- The Secretary of State shall provide staff assistance to the Commission.

" § 143-653. Ultimate warrior matches prohibited.

Ultimate warrior matches, whether the participants are professionals or amateurs, are prohibited. No person shall promote, conduct, or engage in ultimate warrior matches. This section shall not preclude boxing and kickboxing as regulated in this Article or professional wrestling.

" § 143-654. Licensing and permitting.

(a) License and Permit Required. -- It is unlawful for any person to act in this State as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper, or second unless the person is licensed to do so under this Article. It is unlawful for a promoter to present a match in this State unless the promoter has a permit issued under this Article to do so. The Commission has the exclusive authority to issue, deny, suspend, or revoke any license or permit provided for in this Article.

(b) License. -- A license issued under this Article must be renewed annually on or before January 1. A license for an announcer, contestant, judge, matchmaker, referee, timekeeper, or second shall be issued only to a natural person. A natural person shall not transfer or assign a license or change it into another name. A license for a manager or promoter may be issued to a corporation or partnership; provided, however, that all officers or partners shall submit an application for individual licensure, and only those officers or partners who are licensed shall be entitled to negotiate or sign contracts. The addition of a new officer or partner during the license period shall necessitate the filing of an application for individual licensure by the new officer or partner.

An applicant for a license shall file with the Commission the appropriate nonrefundable fee and any forms, documents, medical examinations, or exhibits the Commission may require in order to properly administer this Article. The information requested shall include the date of birth and social security number of each applicant as well as any other personal data necessary to positively identify the applicant and may include the requirement of verification of any documents the Commission deems appropriate. A person may not participate under a fictitious or assumed name in any match unless the person has first registered the name with the Commission.

(c) Surety Bond. -- An applicant for a promoter's license must submit, in addition to any other forms, documents, or exhibits, a surety bond in an

amount to be no less than five thousand dollars (\$5,000). The amount of the surety bond shall be negotiable upon the sole discretion of the Commission. All surety bonds shall be upon forms approved by the Secretary of State and supplied by the Commission.

(d) Permit. -- A permit issued to a promoter under this Article is valid for a single match. An applicant for a permit shall file with the Commission the appropriate nonrefundable fee and any forms or documents the Commission may require.

" § 143-655. *Fees; State Boxing Commission Revenue Account.*

(a) License Fees. -- The Commission shall collect the following license fees:

<u>Announcer</u>	<u>\$50.00</u>
<u>Contestant</u>	<u>\$25.00</u>
<u>Judge</u>	<u>\$50.00</u>
<u>Manager</u>	<u>\$100.00</u>
<u>Matchmaker</u>	<u>\$200.00</u>
<u>Promoter</u>	<u>\$300.00</u>
<u>Referee</u>	<u>\$50.00</u>
<u>Timekeeper</u>	<u>\$50.00</u>
<u>Second</u>	<u>\$25.00</u>

The annual license renewal fees shall not exceed the initial license fees.

(b) Permit Fees. -- The Commission may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:

<u>Seating Capacity</u>	<u>Fee Amount</u>
<u>Less than 2,000</u>	<u>\$100.00</u>
<u>2,000 - 5,000</u>	<u>\$200.00</u>
<u>Over 5,000</u>	<u>\$300.00</u>

(c) State Boxing Commission Revenue Account. -- There is created the State Boxing Commission Revenue Account within the Department of the Secretary of State. Monies collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article.

" § 143-656. *Contracts and financial arrangements.*

Any contract between a boxer and any other licensee and any contract involving a boxing match or exhibition held or to be held in this State must meet the requirements of administrative rules as set forth by the Commission. Any contract which does not satisfy the requirements of the administrative rules shall be void and unenforceable. All contracts shall be in writing.

" § 143-657. *Kickboxing.*

In addition to the other applicable provisions of this Article, a kickboxing match shall be conducted pursuant to the rules and regulations in effect for the Professional Karate Association, the International Sport Karate Association, or for any other professional organizations approved by the Commission.

" § 143-658. *Violations.*

(a) Civil Penalties. -- The Commission may issue an order against a licensee or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars (\$5,000) for a single violation or of up to twenty-five thousand dollars (\$25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

(b) Criminal Penalties. -- A willful violation of any provision of this Article shall constitute a Class 2 misdemeanor. The Secretary of State may refer any available evidence concerning violations of this Article to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings.

The attorneys employed by the Secretary of State shall be available to prosecute or assist in the prosecution of criminal cases when requested to do so by a district attorney and the Secretary of State approves.

(c) Injunction. -- Whenever it appears to the Commission that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Article or any rule or order hereunder, the Commission may in its discretion bring an action in any court of competent jurisdiction to enjoin those acts or practices and to enforce compliance with this Article or any rule or order issued pursuant to this Article.

(d) Enforcement. -- For purposes of enforcing this Article, the Department of the Secretary of State's law enforcement agents have statewide jurisdiction. These law enforcement agents may assist local law enforcement agencies in their investigations and may initiate and carry out, in coordination with local law enforcement agencies, investigations of violations of this Article. These law enforcement agents have all the powers and authority of law enforcement officers when executing arrest warrants."

**Sec. 2.** This act becomes effective January 1, 1996.

In the General Assembly read three times and ratified this the 27th day of July, 1995.

S.B. 528

## CHAPTER 500

### AN ACT TO ESTABLISH THE MEDIATED SETTLEMENT CONFERENCES IN CIVIL ACTIONS IN SUPERIOR COURT AND IN PRELITIGATION FARM NUISANCE DISPUTES.

*The General Assembly of North Carolina enacts:*

**Section 1.** Chapter 7A of the General Statutes is amended by adding the following new sections to read:

*"§ 7A-38.1. Mediated settlement conferences in superior court civil actions.*

(a) Purpose. The General Assembly finds that a system of court-ordered mediated settlement conferences should be established to facilitate the settlement of superior court civil actions and to make civil litigation more economical, efficient, and satisfactory to litigants and the State. Therefore, this section is enacted to require parties to superior court civil actions and their representatives to attend a pretrial, mediated settlement conference

conducted pursuant to this section and pursuant to rules of the Supreme Court adopted to implement this section.

(b) Definitions. As used in this section:

- (1) 'Mediated settlement conference' means a pretrial, court-ordered conference of the parties to a civil action and their representatives conducted by a mediator.
- (2) 'Mediation' means an informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.
- (3) 'Mediator' means a neutral person who acts to encourage and facilitate a resolution of a pending civil action. A mediator does not make an award or render a judgment as to the merits of the action.

(c) Rules of procedure. The Supreme Court may adopt rules to implement this section.

(d) Statewide implementation. Mediated settlement conferences authorized by this section shall be implemented in all judicial districts as soon as practicable, as determined by the Director of the Administrative Office of the Courts.

(e) Cases selected for mediated settlement conferences. The senior resident superior court judge of any participating district may order a mediated settlement conference for any superior court civil action pending in the district. The senior resident superior court judge may by local rule order all cases, not otherwise exempted by the Supreme Court rule, to mediated settlement conference.

(f) Attendance of parties. The parties to a superior court civil action in which a mediated settlement conference is ordered, their attorneys and other persons or entities with authority, by law or by contract, to settle the parties' claims shall attend the mediated settlement conference unless excused by rules of the Supreme Court or by order of the senior resident superior court judge. Nothing in this section shall require any party or other participant in the conference to make a settlement offer or demand which it deems is contrary to its best interests.

(g) Sanctions. Any person required to attend a mediated settlement conference who, without good cause, fails to attend in compliance with this section and the rules adopted under this section, shall be subject to any appropriate monetary sanction imposed by a resident or presiding superior court judge, including the payment of attorneys' fees, mediator fees, and expenses incurred in attending the conference. If the court imposes sanctions, it shall do so, after notice and a hearing, in a written order, making findings of fact and conclusions of law. An order imposing sanctions shall be reviewable upon appeal where the entire record as submitted shall be reviewed to determine whether the order is supported by substantial evidence.

(h) Selection of mediator. The parties to a superior court civil action in which a mediated settlement conference is to be held pursuant to this section shall have the right to designate a mediator. Upon failure of the parties to designate a mediator within the time established by the rules of the Supreme Court, a mediator shall be appointed by the senior resident superior court judge.



(i) Promotion of other settlement procedures. Nothing in this section is intended to preclude the use of other dispute resolution methods within the superior court. Parties to a superior court civil action are encouraged to select other available dispute resolution methods. The senior resident superior court judge, at the request of and with the consent of the parties, may order the parties to attend and participate in any other settlement procedure authorized by rules of the Supreme Court or by the local superior court rules, in lieu of attending a mediated settlement conference. Neutral third parties acting pursuant to this section shall be selected and compensated in accordance with such rules or pursuant to agreement of the parties. Nothing in this section shall prohibit the parties from participating in, or the court from ordering, other dispute resolution procedures, including arbitration to the extent authorized under State or federal law.

(j) Immunity. Mediator and other neutrals acting pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, except that mediators and other neutrals may be disciplined in accordance with enforcement procedures adopted by the Supreme Court pursuant to G.S. 7A-38.2.

(k) Costs of mediated settlement conference. Costs of mediated settlement conferences shall be borne by the parties. Unless otherwise ordered by the court or agreed to by the parties, the mediator's fees shall be paid in equal shares by the parties. For purposes of this section, multiple parties shall be considered one party when they are represented by the same counsel. The rules adopted by the Supreme Court implementing this section shall set out a method whereby parties found by the court to be unable to pay the costs of the mediated settlement conference are afforded an opportunity to participate without cost. The rules adopted by the Supreme Court shall set the fees to be paid a mediator appointed by a judge upon the failure of the parties to designate a mediator.

(l) Inadmissibility of negotiations. Evidence of statements made and conduct occurring in a mediated settlement conference shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference.

No mediator shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediated settlement conference in any civil proceeding for any purpose, except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators, and proceedings to enforce laws concerning juvenile or elder abuse.

(m) Right to jury trial. Nothing in this section or the rules adopted by the Supreme Court implementing this section shall restrict the right to jury trial.

*"§ 7A-38.2. Regulation of mediators.*

(a) The Supreme Court is authorized to adopt standards for the certification and conduct of mediators who participate in the mediated settlement conference program established pursuant to G.S. 7A-38.1. The



standards may also regulate mediator training programs. The Supreme Court may adopt procedures for the enforcement of those standards.

(b) The administration of mediator certification, regulation of mediator conduct, and decertification shall be conducted through the Dispute Resolution Commission, established under the Judicial Department. The rules and regulations governing the operation of the Commission shall be adopted by the Supreme Court. The Commission shall be administered under the direction and supervision of the Director of the Administrative Office of the Courts. The Commission shall exercise all of its duties independently of the Director, except all management functions shall be performed under the direction and supervision of the Director.

(c) The Dispute Resolution Commission shall consist of nine members: two judges appointed by the Chief Justice of the Supreme Court; two mediators certified to conduct mediated settlement conferences appointed by the Chief Justice of the Supreme Court; two practicing attorneys who are not certified as mediators appointed by the President of the North Carolina State Bar; and three citizens knowledgeable about mediation, one of whom shall be appointed by the Governor, one by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Members shall serve four-year terms, except that one judge, one mediator, one attorney, and the citizen member appointed by the Governor, shall be appointed for an initial term of two years. Members may serve no more than two consecutive terms. The Chief Justice shall designate one of the judge members to serve as chair for a two-year term. Members of the Commission shall be compensated pursuant to G.S. 138-5.

(d) An administrative fee, not to exceed two hundred dollars (\$200.00), may be charged by the Administrative Office of the Courts to applicants for certification and annual renewal of certification for mediators and mediation training programs operation under this Article. The fees collected may be used by the Director of the Administrative Office of the Courts to establish and maintain the operations of the Commission and its staff.

"§ 7A-38.3. *Prelitigation mediation of farm nuisance disputes.*

(a) Definitions. -- As used in this section:

- (1) 'Farm nuisance dispute' means a claim that the farming activity of a farm resident constitutes a nuisance.
- (2) 'Farm resident' means a person holding an interest in fee, under a real estate contract, or under a lease, in land used for farming activity when that person manages the operations on the land.
- (3) 'Farming activity' means the cultivation of farmland for the production of crops, fruits, vegetables, ornamental and flowering plants, and the utilization of farmland for the production of dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.
- (4) 'Mediator' means a neutral person who acts to encourage and facilitate a resolution of a farm nuisance dispute.

- (5) 'Nuisance' means an action that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property.
- (6) 'Party' means any person having a dispute with a farm resident.
- (7) 'Person' means a natural person, or any corporation, trust, or limited partnership as defined in G.S. 59-102.

(b) Voluntary Mediation. -- The parties to a farm nuisance dispute may agree at any time to mediation of the dispute under the provisions of this section.

(c) Mandatory Mediation. -- Prior to bringing a civil action involving a farm nuisance dispute, a farm resident or any other party shall initiate mediation pursuant to this section. If a farm resident or any other party brings an action involving a farm nuisance dispute, this action shall, upon the motion of any party prior to trial, be dismissed without prejudice by the court unless any one or more of the following apply:

- (1) The dispute involves a claim that has been brought as a class action.
- (2) The nonmoving party has satisfied the requirements of this section and such is indicated in a mediator's certification issued under subsection (g) of this section.
- (3) The court finds that a mediator improperly failed to issue a certification indicating that the nonmoving party satisfied the requirements of this section.
- (4) The court finds good cause for a failure to attempt mediation. Good cause includes, but is not limited to, a determination that the time delay required for mediation would likely result in irreparable harm or that injunctive relief is otherwise warranted.

(d) Initiation of Mediation. -- Prelitigation mediation of a farm nuisance dispute shall be initiated by filing a request for mediation with the clerk of superior court in a county in which the action may be brought. The Administrative Office of the Courts shall prescribe a request for mediation form. The party filing the request for mediation also shall mail a copy of the request by certified mail, return receipt requested, to each party to the dispute. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(e) Mediation Procedure. -- Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(f) Waiver of Mediation. -- The parties to the dispute may waive the mediation required by this section by informing the mediator of their waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting.

(g) Certification That Mediation Concluded. -- Immediately upon a waiver of mediation under subsection (f) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. Each party to the mediation has satisfied the requirements of this section upon the filing of the certification, except any party specified in the certification as having failed or refused to attend one or more mediation meetings or otherwise participate. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation mediation conducted under this section.

(li) Time Periods Tolloed. -- Time periods relating to the filing of a claim or the taking of other action with respect to a farm nuisance dispute, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (g) of this section."

**Sec. 2.** G.S. 7A-38(o) reads as rewritten:

"(o) Report on pilot program. The Administrative Office of the Courts shall file a written report with the General Assembly on the evaluation of the pilot program on or before May 1, 1995. The pilot program shall terminate on June 30, 1995. Continuation and funding of the pilot program. Notwithstanding the above, the termination date of the pilot program is extended to October 1, 1995. The Administrative Office of the Courts is authorized to use funds available to the Judicial Department from July 1, 1995, to October 1, 1995, for the purpose of operating the program."

**Sec. 3.** Effective October 1, 1995, G.S. 7A-38 is repealed.

**Sec. 4.** House Bill 913 of the 1995 Session of the General Assembly, if enacted, is repealed.

**Sec. 5.** The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of this act that can be given effect without the invalid provision.

**Sec. 6.** Section 2 and Section 4 of this act are effective upon ratification. The remainder of this act becomes effective October 1, 1995, and shall apply, after the Supreme Court has adopted rules implementing this act, to all superior court civil actions filed in any county after the date this program is implemented in that county. This act also applies to all previously filed actions which are or have been specifically ordered to a

mediated settlement conference by a senior resident superior court judge under G.S. 7A-38 prior to its repeal.

In the General Assembly read three times and ratified this the 27th day of July, 1995.

S.B. 143

## CHAPTER 501

AN ACT TO REPEAL THE RESTRICTIONS ON DEALINGS WITH SOUTH AFRICA NOW THAT THE POLICIES OF THAT COUNTRY HAVE CHANGED.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 115C-49 is repealed.

**Sec. 2.** G.S. 147-69.2(c) is repealed.

**Sec. 3.** G.S. 153A-141 is repealed.

**Sec. 4.** G.S. 160A-197 is repealed.

**Sec. 5.** Chapters 446 and 1070 of the Session Laws of 1987 are repealed.

**Sec. 6.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1995.

S.B. 927

## CHAPTER 502

AN ACT TO PROVIDE THAT SMALL LANDFILLS FOR THE DISPOSAL OF DEMOLITION DEBRIS ARE EXEMPT FROM THE PERMITTING REQUIREMENTS GENERALLY APPLICABLE TO LANDFILLS AND TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO GRANT A VARIANCE IN THE GEOGRAPHIC AREA SERVED BY A SANITARY LANDFILL UNDER CERTAIN CIRCUMSTANCES.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 130A-294(a)(4)a. reads as rewritten:

- "a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. A landfill for the disposal of demolition debris generated on the same parcel or tract of land on which the landfill is located that has a disposal area of one acre or less is exempt from the permit requirement of this section and rules adopted pursuant to this section, and shall be governed by G.S. 130A-301.2. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission for Health Services, except as provided in



subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges which are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans which will be required for the applicant to obtain a permit."

**Sec. 2.** Part 2 of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-301.2. Disposal of demolition debris in an on-site landfill having a disposal area of one acre or less.

(a) A person may dispose of demolition debris generated on land that the person owns in a landfill that is located on the same parcel or tract of land and that has a disposal area of one acre or less without obtaining a permit from the Department if the requirements of this section are met. A person may not dispose of demolition debris in a landfill to which this section applies unless the board of commissioners of the county in which the landfill is proposed to be located approves the landfill. If the landfill is to be located within a city or within the extraterritorial jurisdiction of a city, the board of commissioners shall consult the governing board of the city before approving the proposed landfill. The board of commissioners shall approve the landfill if the board finds that:

- (1) The landfill is located at least one-quarter mile from any other landfill of any type.
- (2) The perimeter of the landfill is at least 50 feet from the property boundary.
- (3) The perimeter of the landfill is at least 500 feet from the nearest drinking water well.
- (4) The waste disposal area of the landfill is at least four feet above the seasonal high groundwater table.
- (5) The landfill will comply with all applicable federal, State, and local laws, regulations, rules, and ordinances.

(b) Demolition debris may be disposed in a landfill to which this section applies without being separated into demolition debris components. No waste other than that generated by the demolition of a building or other structure shall be disposed of in the landfill.



(c) The owner or operator of the landfill shall close the landfill within 30 days after the demolition is completed or terminated. The owner or operator shall compact the demolition debris and cover it with at least two feet of compacted earth. The cover of the landfill shall be graded so as to minimize water infiltration, promote proper drainage, and control erosion. Erosion of the cover shall be controlled by establishing suitable vegetative cover.

(d) No building shall be located or constructed immediately above any part of a landfill to which this section applies. No construction, except for site preparation and foundation work, shall be commenced on a parcel or tract of land on which a landfill to which this section applies is located until the landfill is closed.

(e) Within 30 days of the closure of the landfill, or at least 30 days before the land, or any interest in the land, on which the landfill is located is transferred, whichever is earlier, the owner or owners of record of the land on which the landfill is located shall file with the register of deeds of the county in which the landfill is located a survey plat of the property that meets the requirements of G.S. 47-30. The plat shall accurately show the location of the landfill and shall reference this section. A certified copy of the plat showing the book and page number where recorded shall be filed with the Department at the same time that the certified copy of the notice required by subsection (f) of this section is filed with the Department.

(f) Within 30 days of the closure of the landfill or at least 30 days before the land, or any interest in the land, on which the landfill is located is transferred, whichever is earlier, the owner or owners of record of the land on which the landfill is located shall file with the register of deeds of the county in which the landfill is located a notice that a landfill for the disposal of demolition debris has been located on the land. The notice shall include a description of the land that would be sufficient as a description in an instrument of conveyance. The notice shall list the owners of record of the land at the time the notice is filed and shall reference the book and page number where the deed or other instrument by which the owners of record acquired title is located. The notice shall reference the book and page number where the survey plat required by subsection (e) of this section is recorded. The notice shall reference this section, shall describe with particularity the type and size of the building or other structure that was demolished, and shall state the dates on which the landfill opened and closed. The notice shall be executed by the owner or owners of record as provided in Chapter 47 of the General Statutes. The register of deeds shall record the notice and index it in the grantor index under the name of the owner, or names of the owners, of the land. The owner shall file a certified copy of the notice showing the book and page number where recorded, together with a certified copy of the survey plat as required by subsection (e) of this section, with the Department, and shall pay a filing fee of twenty-five dollars (\$25.00) to the Department, within 15 days after the notice is recorded.

(g) When the land, or any portion of the land, on which the landfill is located is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that

the property has been used as a landfill for the disposal of demolition debris. The statement shall include a reference to this section and to the book and page number where the notice required by subsection (f) of this section is recorded.

(h) The board of commissioners of the county in which a landfill to which this section applies is located shall ensure that the requirements of subsections (a) through (d) of this section are met."

**Sec. 2.1.** Article 2 of Chapter 47 of the General Statutes is amended by adding a new section to read:

*"§ 47-28. Recordation of waste disposal on land.*

(a) A permit for the disposal of waste on land shall be recorded as provided in G.S. 130A-301. The disposal of demolition debris in an on-site landfill having a disposal area of one acre or less shall be recorded as provided in G.S. 130A-301.2.

(b) An inactive hazardous substance or waste disposal site shall be recorded as provided in G.S. 130A-310.8."

**Sec. 3.** Notwithstanding any rule to the contrary, upon request of the board of commissioners of a county that operates a sanitary landfill, the Department of Environment, Health, and Natural Resources may grant a variance in the geographic area served by the sanitary landfill, as specified in the permit for the sanitary landfill, to allow the disposal of municipal solid waste generated in a county adjacent to the county in which the sanitary landfill is located. The Department shall grant the request for a variance only if it finds that the variance will result in the closure of the sanitary landfill on or before 31 December 1996. A county that requests a variance under this section shall close the sanitary landfill on or before 31 December 1996. This section shall not be construed to authorize the disposal of municipal solid waste in excess of the permitted capacity of the sanitary landfill.

**Sec. 4.** This act is effective upon ratification. Sections 1 and 2 of this act and the second sentence of G.S. 47-28(a), as enacted by Section 2.1 of this act, expire on 30 June 2001. Section 3 of this act expires on 31 December 1996.

In the General Assembly read three times and ratified this the 28th day of July, 1995.

S.B. 459

## CHAPTER 503

AN ACT TO PROVIDE THAT CERTAIN BAIL BONDS SHALL BE TREATED AS A CASH DEPOSIT AND TO AMEND THE BAIL BOND FORFEITURE PROCEDURE PROVIDED BY ARTICLE 26 OF CHAPTER 15A OF THE GENERAL STATUTES.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 15A-531 reads as rewritten:

*"§ 15A-531. Definitions.*

As used in this Article the following definitions apply unless the context clearly requires otherwise:

- (1) **Bail Bond.** -- An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A surety bail bond for which the surety is a surety bondsman, as defined in G.S. 58-71-1, acting on behalf of an insurer shall be considered the same as a cash deposit for all purposes in this Article. A bail bond signed by a professional bondsman who is not a surety bondsman, as defined in G.S. 58-71-1, shall not be considered the same as a cash deposit under this Article. Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash.
- (2) **Obligor.** -- A principal or a surety on a bail bond.
- (3) **Principal.** -- A defendant or material witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.
- (4) **Surety.** -- One who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail."

**Sec. 2.** G.S. 15A-544(c1) reads as rewritten:

"(c1) If the principal does not appear before the court having jurisdiction because the principal is incarcerated in North Carolina and unable to appear before the court, but the surety appears within the time allowed following the date of service and satisfies the court that the principal's appearance on the date set was impossible because the principal was incarcerated, incarcerated in North Carolina, the order of forfeiture must be set aside."

**Sec. 3.** G.S. 15A-544, as rewritten by Section 2 of this act, reads as rewritten:

"§ 15A-544. *Forfeiture.*

(a) By entering into a bail bond the obligor submits himself to the jurisdiction of the court and irrevocably appoints the clerk as his the obligor's agent for any proceedings with reference to the bond. His The obligor's liability may be enforced on motion without the necessity of an independent action. Each obligor, including the principal, bail agent, and the surety represented by the bail agent, shall enter on the bond the obligor's mailing address, street address, and telephone number for the service of any process required by this section or other provision of law. If the address or telephone number of the obligor changes during the pendency of any proceeding with reference to the bond, it shall be the duty of the obligor to notify the clerk of the obligor's new address and telephone number.

(b) If the principal does not comply with the conditions of the bail bond, the court having jurisdiction must enter an order declaring the bail to be forfeited. If forfeiture is ordered by the court, a copy of the order of forfeiture and notice that judgment will be entered upon the order after 60 days must be served on each obligor. Service is to be made by the sheriff by delivery of the order and notice to him or by delivery at his dwelling house or place of abode with some person of suitable age and discretion residing

~~therein. If the sheriff is unable to effect service because an obligor cannot be found or has no dwelling house or place of abode known to the sheriff, he must file a return to this effect; the clerk must then mail a the clerk mailing by certified mail, return receipt requested, a copy of the order of forfeiture and notice to the each obligor at his address of record each obligor's address as noted on the bond and note on the original the date of mailing. Service is complete three days after the mailing.~~

~~(c) Except as provided in subsection (c1) of this section, If the principal does not appear before the court having jurisdiction at any time within 60 days of following the date of service, or on the first day of the next session of court commencing presentment of the forfeiture calendar more than 60 days after the date of service, and satisfy the court that his appearance on the date set was impossible or that his failure to appear was without his fault, the court must enter judgment for the State against the principal and his sureties for the amount of the bail and the costs of the proceedings, the principal or surety may move the court having jurisdiction of the matter, orally or in writing, to strike the order of forfeiture and recall the notice of forfeiture. If the principal appears principal or surety appears and moves within the time allowed following the date of service and satisfies the court that his appearance the principal's failure to appear on the date set was impossible or that his the principal's failure to appear was without his the principal's fault, the order of forfeiture must be set aside. If the principal appears but is unable to or surety does not satisfy the court that his the principal's appearance on the date set was impossible or that his the principal's failure to appear was without his fault, but the court determines that justice does not require the forfeiture of the full amount of the bond, the court may enter judgment in an amount it considers appropriate, the principal's fault, the court must then enter judgment for the State against the principal and surety for the amount of the bail and the cost of the proceeding.~~

~~(c1) If the principal does not appear before the court having jurisdiction because the principal is incarcerated in North Carolina and unable to appear before the court, but the surety appears within the time allowed following the date of service and satisfies the court that the principal's appearance on the date set was impossible because the principal was incarcerated in North Carolina, the order of forfeiture must be set aside.~~

~~(d) To facilitate the procedure under this section, the clerk in each county shall prepare for both the district and superior court a forfeiture calendar once each month when court is in session. The forfeiture calendar shall list the names of all principals and sureties to whom forfeiture has been ordered more than 60 days previously in the county and as to which judgments of forfeiture against the principal and surety have not been entered or, if entered, not yet satisfied by execution. The forfeiture calendar shall show the amount of the bond ordered forfeited in each case. In addition, the clerk shall place on the forfeiture calendar for hearing all written motions to strike an order of forfeiture filed since the previous forfeiture calendar. It shall be the duty of the district attorney to present the forfeiture calendar to the court, but the attorney for the county school board shall have the right to appear and be heard when the forfeiture calendar is~~



presented. At the district attorney's discretion, the district attorney may appoint the county school board attorney as the district attorney's designee for the presentation of the forfeiture calendar.

(e) At any time within 90 days after entry of the judgment against a principal or his surety, or on the first day of the next session of court commencing more than 90 days after the entry of the judgment, the court may direct the principal or surety, by verified written petition, may request that the judgment be remitted in whole or in part, upon such conditions as the court may impose, if it appears that justice requires the remission of part or all of the judgment. A copy of the petition must be served upon the attorney for the county school board at least three working days prior to the hearing. The clerk shall place on the forfeiture calendar for hearing all petitions that have been filed during the previous month or since the last forfeiture calendar. The petitioner, the district attorney, and the school board attorney shall be notified of the date, time, and place of the hearing. The petitioner, the district attorney, and the county school board attorney shall be given an opportunity to appear and be heard. If the principal is surrendered by the surety and incarcerated in the State within 90 days of the entry of the judgment, the forfeiture shall be stricken upon the payment of costs. If the principal is incarcerated or served an order for arrest in North Carolina within 90 days of the entry of the judgment and the principal placed on a new bond or released by the court, then the forfeiture shall be stricken upon the payment of costs.

(f) If a judgment has not been remitted within the period provided in subsection (e) above, the clerk must issue execution on the judgment within 30 days, and remit the clear proceeds to the county for use in maintaining free public schools. Any clerk who fails to perform his duty as required in this subsection is subject to a penalty of five hundred dollars (\$500.00).

(g) If a return levy of execution upon a judgment against an obligor remains unsatisfied for 10 days, the obligor may sheriff shall notify the clerks and magistrates in each county in the prosecutorial district and the obligor shall not become surety on any bail bond in the prosecutorial district so long as the judgment remains unsatisfied. Nothing in this subsection makes lawful any act made unlawful by Article 71 of Chapter 58 of the General Statutes.

(h) For extraordinary cause shown, the court which has entered judgment upon a forfeiture of a bond may, after execution, remit the judgment in whole or in part and order the clerk to refund such amounts as the court considers appropriate. Any person moving for remission of judgment must do so by verified petition, and a copy of the petition must be served upon the attorney for the county school board at least three working days prior to the hearing on the motion. The moving party must notify the attorney for the school board of the time and place of the hearing, and such attorney, if he so desires, must be given an opportunity to appear and be heard. If money has been paid to the county pursuant to execution on a judgment of forfeiture, it must refund to the person entitled the amount of any remission granted under the terms of this subsection upon receipt of a certified copy of the judgment of remission from the clerk."



**Sec. 4.** Sections 1 and 2 of this act are effective upon ratification. Section 3 of this act becomes effective December 1, 1995.

In the General Assembly read three times and ratified this the 28th day of July, 1995.

S.B. 874

**CHAPTER 504**

AN ACT TO CONFIRM THE WATER RIGHTS OF THE STATE IN THE ROANOKE RIVER BASIN AND TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL CHANGES TO VARIOUS LAWS RELATING TO ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

*The General Assembly of North Carolina enacts:*

**Section. 1.** Part 2 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-215.22B. Roanoke River Basin water rights.

The State reserves and allocates to itself, as protector of the public interest, all rights in the water located in those portions of Kerr Lake and Lake Gaston that are in the State."

**Sec. 2.** G.S. 7A-29(a) reads as rewritten:

"(a) From any final order or decision of the North Carolina Utilities Commission not governed by subsection (b) of this section, the Department of Human Resources under G.S. 131E-188(b), the Commissioner of Banks under Articles 17, 18, 18A, and 21 of Chapter 53 of the General Statutes, the Administrator of Savings and Loans under Article 3A of Chapter 54B of the General Statutes, the North Carolina Industrial Commission, the North Carolina State Bar under G.S. 84-28, the Property Tax Commission under G.S. 105-290 and G.S. 105-342, the Commissioner of Insurance under G.S. 58-2-80, or the Secretary of Environment, Health, and Natural Resources under G.S. ~~104E-6.2~~, 104E-6.2 or G.S. 130A-293, appeal as of right lies directly to the Court of Appeals."

**Sec. 3.** G.S. 74-56(a) reads as rewritten:

"(a) The Department may direct investigations as it may reasonably deem necessary to carry out its duties as prescribed by this Article, and for this purpose ~~to~~ may enter at reasonable times upon any mining operation for the purpose of determining compliance with this Article and any rules adopted under this Article and for determining compliance with the terms and conditions of a mining permit, but for no other purpose. No person shall refuse entry or access to any authorized representative of the Department who enters the mining operation for purposes of inspection or other official duties and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with the representative while the representative is carrying out official duties. Upon arriving at the site, the representative of the Department shall make every reasonable effort to notify the operator or the operator's agent that the representative of the Department intends to inspect the site. Upon receipt of the operator's annual report or report of completion of reclamation and at any other reasonable time the Department may elect, the Department shall cause the permit area to be

inspected to determine whether the operator has complied with the reclamation plan, the requirements of this Article, any rules adopted under this Article, and the terms and conditions of the permit."

**Sec. 4.** G.S. 104E-5(14b) reads as rewritten:

"(14b) 'Secretary' means the Secretary of ~~the Department of~~ Environment, Health, and Natural Resources."

**Sec. 5.** G.S. 104F-4 reads as rewritten:

"§ 104F-4. *Advisory Committee.*

(a) The Advisory Committee to the North Carolina Members of the Low-Level Radioactive Waste Management Compact Commission is hereby created. It shall consist of seven voting members, two to be appointed by the Governor, who shall be members of the Radiation Protection Commission, two by the President of the Senate, and two by the Speaker of the House of Representatives. ~~The Chief of the Radiation Protection Section~~ Director of the Division of Facility Services ~~Radiation Protection of the~~ Department of Environment, Health, and Natural Resources shall be an ex officio member. The members shall serve for two-year terms. A vacancy in membership shall be filled by the appointing authority who made the initial appointment. A member whose term expires may be reappointed.

(b) It shall be the duty of the Committee to consult with and advise the State's representatives to the Compact Commission concerning technical and policy matters.

(c) The Governor shall appoint the Committee chairman and he may be reappointed. The Committee shall meet at such times and places as the chairman shall designate. The facilities of the State Legislative Building and the Legislative Office Building shall be available to the Committee, subject to approval of the Legislative Services Commission. Legislative members of the Committee shall be reimbursed for subsistence and travel expenses at the rates set out in G.S. 120-3.1. Members of the Committee who are not officers or employees of the State shall receive compensation and reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Committee who are officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rate set out in G.S. 138-6.

(d) Subject to the approval of the Legislative Services Commission, the staff resources of the Legislative Services Commission shall be available to the Committee without cost except for travel, subsistence, supplies, and materials. The Committee may solicit, employ, or contract for technical assistance and clerical assistance and may purchase or contract for the materials and services it needs."

**Sec. 6.** G.S. 113-315.5 reads as rewritten:

"§ 113-315.5. *Alternative method for collection of assessment.*

As an alternate method for the collection of assessments provided for in G.S. ~~113-310 [G.S. 113-315.4]~~, 113-315.4, upon the request or petition of the agency and action by the Marine Fisheries Commission as prescribed in G.S. 113-313, the Secretary shall notify, by letter, all persons or firms licensed by the Marine Fisheries Commission to engage in business and commerce as may be directly affected by the paying of the assessment, that on and after the date specified in the letter the assessment shall become due

and payable, and shall be remitted by said persons or firms to the Secretary who shall thereupon pay the amount of the assessments to the agency. The books and records of all such persons and firms shall at all times during regular business hours be open for inspection by the Secretary or his duly authorized agents."

**Sec. 7.** G.S. 113A-105(b), as amended by Section 4 of Chapter 123 of the 1995 Session Laws, reads as rewritten:

"(b) The Coastal Resources Advisory Council shall consist of not more than ~~47~~ 45 members appointed or designated as follows:

- (1) Two individuals designated by the Secretary from among the employees of ~~his~~ the Department;
- (1a) The Secretary of ~~the Department of~~ Commerce or ~~his designee;~~ person designated by the Secretary of Commerce;
- (2) The Secretary of ~~the Department of~~ Administration or ~~his designee;~~ person designated by the Secretary of Administration;
- (3) The Secretary of ~~the Department of~~ Transportation and Highway Safety or ~~his designee;~~ person designated by the Secretary of Transportation; and one additional member selected by him the Secretary of Transportation from his Department; the Department of Transportation;
- (4) The State Health Director or the ~~designee thereof;~~ person designated by the State Health Director;
- (5) The Commissioner of Agriculture or ~~his designee;~~ person designated by the Commissioner of Agriculture;
- (6) The Secretary of ~~the Department of~~ Cultural Resources or ~~his designee;~~ person designated by the Secretary of Cultural Resources;
- (7) One member from each of the four multi-county planning districts of the coastal area to be appointed by the lead regional agency of each district;
- (8) One representative from each of the counties in the coastal area to be designated by the respective boards of county commissioners;
- (9) No more than eight additional members representative of cities in the coastal area and to be designated by the Commission;
- (10) Three members selected by the Commission who are marine scientists or technologists;
- (11) One member who is a local health director selected by the Commission upon the recommendation of the Secretary."

**Sec. 8.** G.S. 130A-22(b2) reads as rewritten:

"(b2) The penalty for violations of the asbestos NESHAP for ~~renovations and demolitions,~~ demolition and renovation, as defined in G.S. 130A-444, shall not exceed ten thousand dollars (\$10,000) per day per violation. Until the Department has provided the person with written notification of the violation of the asbestos NESHAP for ~~renovations and demolitions~~ demolition and renovation that describes the violation, recommends a general course of action, and establishes a time frame in which to correct the violations, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate

violation. A violation of the asbestos NESHP for ~~renovations and demolitions~~ demolition and renovation is not considered to continue during the period a person who has received the notice of violation is following the general course of action and complying with the time frame set forth in the notice of violation."

**Sec. 9.** G.S. 130A-309.10(h) reads as rewritten:

"(h) The accidental or occasional disposal of small amounts of prohibited solid waste by landfill or incineration shall not be construed as a violation of ~~subsections~~ subsection (f) or (f1) of this section."

**Sec. 10.** G.S. 143-215.4(b) reads as rewritten:

"(b) Procedures for Public Input. --

(1) ~~Procedures for Public Input.~~ -- The Commission may, on its own motion or when required by federal law, request public comments on or hold public hearings on matters within the scope of its authority under this Article or Articles 21A or 21B of this Chapter. To request public comments on a matter, the Commission shall notify appropriate agencies of the opportunity to submit written comments to the Commission on the matter and shall publish a notice in a newspaper having general circulation in the affected area, stating the matter under consideration by the Commission and informing the public of its opportunity to submit written comments to the Commission on the matter. A public comment period shall extend for at least 30 days after the notice is published.

(2) To hold a public hearing on a matter, the Commission shall notify, by personal service or certified mail, persons directly affected by the matter under consideration and shall publish a notice in a newspaper having general circulation in the affected area, stating the matter under consideration by the Commission and the time, date, and place of a public hearing to be held on the matter. A public hearing shall be held no sooner than 20 days after the notice is published. The proceedings at a public hearing held under this subsection shall be recorded. Upon payment of a fee established by the Commission, any person may obtain a copy of the record of the public hearing. After a public hearing, the Commission shall accept written comments for the time period prescribed by the Commission.

(3) This subsection does not apply to rule-making proceedings, contested case hearings, or the issuance of permits required under Title V. The Commission shall establish procedures for public hearings, public notice, and public comment respecting permits required by Title V as provided by G.S. 143-215.111(4)."

**Sec. 11.** G.S. 143-215.96 reads as rewritten:

"§ 143-215.96. *Oil terminal facility registration.*

(a) ~~Prior to November 10, 1973, the~~ The owner or operator of every oil terminal facility in the State shall secure a registration certificate from the Secretary of Natural and Economic Resources. Such a certificate shall be issued only where the applicant shall have furnished the following information concerning the oil terminal facility; ~~Secretary.~~ The Secretary

shall not issue a registration certificate until the owner or operator has furnished the following information:

- (1) Complete name of the owner and operator of the oil terminal facility together with addresses and telephone numbers;
  - (2) Number of employees of the oil terminal facility and the principal officers;
  - (3) Maps or sketches, based on criteria developed by the ~~Secretary of Natural and Economic Resources to show~~ Secretary, showing property lines of the oil terminal facility and location of nearby watercourses or bodies of water as specified by the Secretary; and
  - (4) Summary of present and proposed procedures, if any, for prevention of oil spills.
- (b) ~~The owner or operator of any an oil terminal facility which begins operation subsequent to the initial registration date specified in this section shall secure a registration certificate no later than 30 days after beginning operations, the oil terminal facility begins operation."~~

**Sec. 12.** G.S. 150B-21.5(a) reads as rewritten:

"(a) Amendment. -- An agency is not required to publish a notice of rule making in the North Carolina Register or hold a public hearing when it proposes to amend a rule, without changing the substance of the rule, to do one of the following:

- (1) Reletter or renumber the rule or subparts of the rule.
- (2) Substitute one name for another when an organization or position is renamed.
- (3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.
- (4) Change information that is readily available to the public, such as an address or a telephone number.
- (5) Correct a typographical error ~~made in entering the rule~~ in the North Carolina Administrative Code.
- (6) Change a rule in response to a request or an objection by the Commission."

**Sec. 13.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1995.

S.B. 973

## CHAPTER 505

### AN ACT TO CREATE THE NORTH CAROLINA WORKERS' COMPENSATION LOSS COSTS RATING LAW.

*The General Assembly of North Carolina enacts:*

**Sec. 1.** G.S. 58-36-1(3) reads as rewritten:

- "(3) The Bureau shall have the duty and responsibility of promulgating and proposing rates for insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with



the sale of such property insurance: for insurance against theft of or physical damage to private passenger (nonfleet) motor vehicles; for liability insurance for such motor vehicles, automobile medical payments insurance, uninsured motorists coverage and other insurance coverages written in connection with the sale of such liability insurance; ~~and~~ and, as provided in G.S. 58-36-100, for loss costs and residual market rate filings for workers' compensation and employers' liability insurance written in connection therewith. The provisions of this subdivision shall not apply to motor vehicles operated under certificates of authority from the Utilities Commission, the Interstate Commerce Commission, or their successor agencies, where insurance or other proof of financial responsibility is required by law or by regulations specifically applicable to such certificated vehicles. The Bureau shall have no jurisdiction over excess workers' compensation insurance for employers qualifying as self-insurers as provided in G.S. 97-93; nor shall the Bureau's jurisdiction include farm buildings, farm dwellings and their appurtenant structures, farm personal property or other coverages written in connection with farm real or personal property; travel or camper trailers designed to be pulled by private passenger motor vehicles, unless insured under policies covering nonfleet private passenger motor vehicles; residential real and personal property insured in multiple line insurance policies covering business activities as the primary insurable interest; and marine, general liability, burglary and theft, glass, and animal collision insurance, except when such coverages are written as an integral part of a multiple line insurance policy for which there is an indivisible premium."

**Sec. 2.** G.S. 58-36-15 reads as rewritten:

"§ 58-36-15. Filing loss costs, rates, plans with Commissioner; public inspection of filings.

(a) The Bureau shall file with the Commissioner copies of the rates, loss costs, classification plans, rating plans and rating systems used by its members. Each rate filing shall become effective on the date specified in the filing, but not earlier than 105 days from the date the filing is received by the Commissioner: Provided that (1) rate filings for workers' compensation insurance and employers' liability insurance written in connection therewith shall not become effective earlier than 120 days from the date the filing is received by the ~~Commissioner; Commissioner or on the date as provided under G.S. 58-36-100, whichever is earlier;~~ and (2) any filing may become effective on a date earlier than that specified in this subsection upon agreement between the Commissioner and the Bureau.

(b) A filing shall be open to public inspection immediately upon submission to the Commissioner.

(c) The Bureau shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of the experience of its members and of the data, statistics or information collected or used by it in connection with the rates, rating plans, rating systems, loss costs and other

data as specified in G.S. 58-36-100, underwriting rules, policy or bond forms, surveys or inspections made or used by it.

(d) With respect to the filing of rates for nonfleet private passenger motor vehicle insurance, the Bureau shall, on or before February 1 of each year, or later with the approval of the Commissioner, file with the Commissioner the experience, data, statistics, and information referred to in subsection (c) of this section and any proposed adjustments in the rates for all member companies of the Bureau. The filing shall include, where deemed by the Commissioner to be necessary for proper review, the data specified in subsections (c), (e), (g) and (h) of this section. Any filing that does not contain the data required by this subsection may be returned to the Bureau and not be deemed a proper filing. Provided, however, that if the Commissioner concludes that a filing does not constitute a proper filing he shall promptly notify the Bureau in writing to that effect, which notification shall state in reasonable detail the basis of the Commissioner's conclusion. The Bureau shall then have a reasonable time to remedy the defects so specified. An otherwise defective filing thus remedied shall be deemed to be a proper and timely filing, except that all periods of time specified in this Article will run from the date the Commissioner receives additional or amended documents necessary to remedy all material defects in the original filing.

(e) The Commissioner may require the filing of supporting data including:

- (1) The Bureau's interpretation of any statistical data relied upon;
- (2) Descriptions of the methods employed in setting the rates;
- (3) Analysis of the incurred losses submitted on an accident year or policy year basis into their component parts: to wit, paid losses, reserves for losses and loss expenses, and reserves for losses incurred but not reported;
- (4) The total number and dollar amount of paid claims;
- (5) The total number and dollar amount of case basis reserve claims;
- (6) Earned and written premiums at current rates by rating territory;
- (7) Earned premiums and incurred losses according to classification plan categories; and
- (8) Income from investment of unearned premiums and loss and loss expense reserves generated by business within this State.

Provided, however, that with respect to business written prior to January 1, 1980, the Commissioner shall not require the filing of such supporting data which has not been required to be recorded under statistical plans approved by the Commissioner.

(f) On or before September 1 of each calendar year the Bureau shall submit to the Commissioner the experience, data, statistics, and information referred to in subsection (c) of this section and required under G.S. 58-36-100 and a residual market rate or prospective loss costs review based on such data for workers' compensation insurance and employers' liability insurance written in connection therewith. Any rate increase for such insurance that is implemented pursuant to this Article shall become effective solely to such insurance as is written having an inception date on or after the effective date of the rate increase.

(g) The following information must be included in policy form, rule, and rate filings under this Article and under Article 37 of this Chapter:

- (1) A detailed list of the rates, rules, and policy forms filed, accompanied by a list of those superseded; and
- (2) A detailed description, properly referenced, of all changes in policy forms, rules, prospective loss costs, and rates, including the effect of each change.

(h) Except to the extent the Commissioner determines that this subsection is inapplicable to filings made under G.S. 58-36-100 and except for filings made under G.S. 58-36-30, all policy form, rule, prospective loss costs, and rate filings under this Article and Article 37 of this Chapter that are based on statistical data must be accompanied by the following properly identified information:

- (1) North Carolina earned premiums at the actual and current rate level; losses and loss adjustment expenses, each on paid and incurred bases without trending or other modification for the experience period, including the loss ratio anticipated at the time the rates were promulgated for the experience period;
- (2) Credibility factor development and application;
- (3) Loss development factor derivation and application on both paid and incurred bases and in both numbers and dollars of claims;
- (4) Trending factor development and application;
- (5) Changes in premium base resulting from rating exposure trends;
- (6) Limiting factor development and application;
- (7) Overhead expense development and application of commission and brokerage, other acquisition expenses, general expenses, taxes, licenses, and fees;
- (8) Percent rate or prospective loss costs change;
- (9) Final proposed rates;
- (10) Investment earnings, consisting of investment income and realized plus unrealized capital gains, from loss, loss expense, and unearned premium reserves;
- (11) Identification of applicable statistical plans and programs and a certification of compliance with them;
- (12) Investment earnings on capital and surplus;
- (13) Level of capital and surplus needed to support premium writings without endangering the solvency of member companies; and
- (14) Such other information that may be required by any rule adopted by the Commissioner.

Provided, however, that no filing may be returned or disapproved on the grounds that such information has not been furnished if insurers have not been required to collect such information pursuant to statistical plans or programs or to report such information to the Bureau or to statistical agents, except where the Commissioner has given reasonable prior notice to the insurers to begin collecting and reporting such information, or except when the information is readily available to the insurers.

(i) The Bureau shall file with and at the time of any rate or prospective loss costs filing all testimony, exhibits, and other information on which the Bureau will rely at the hearing on the rate filing. The Department shall file

all testimony, exhibits, and other information on which the Department will rely at the hearing on the rate filing 20 days in advance of the convening date of the hearing. Upon the issuance of a notice of hearing the Commissioner shall hold a meeting of the parties to provide for the scheduling of any additional testimony, including written testimony, exhibits or other information, in response to the notice of hearing and any potential rebuttal testimony, exhibits, or other information. This subsection also applies to rate filings made by the North Carolina Motor Vehicle Reinsurance Facility under Article 37 of this Chapter."

**Sec. 3.** Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-36-100. Prospective loss costs filings and final rate filings for workers' compensation and employers' liability insurance.

(a) Nothing in this section requires the Bureau or its member insurers to refile rates previously implemented before two years after the effective date of this section. Any member insurer of the Bureau may continue to use all rates and deviations filed and approved for its use until disapproved, or the insurer makes its own filing to change its rates, either by making an independent filing or by filing a reference filing adoption form adopting the Bureau's prospective loss costs, or modification thereof. Except as provided in subsection (m) of this section, with the initial prospective loss costs reference filing, the Bureau shall no longer develop or file any minimum premiums, minimum premium formulas, or expense constants. If an insurer wishes to amend minimum premium formulas, it must file, for approval, the minimum premium rules, formulas, or amounts it proposes to use.

(b) Definitions. As used in this section, the following terms have the following meanings:

- (1) 'Expenses'. -- That portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, as determined by the insurer.
- (2) 'Developed losses'. -- Losses (including loss adjustment expenses) adjusted, using standard actuarial techniques, to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss (including loss adjustment expense) payments.
- (3) 'Insurer'. -- A member insurer or group.
- (4) 'Loss trending'. -- Any procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective.
- (5) 'Multiplier'. -- An insurer's determination of the expenses, other than loss expense and loss adjustment expense, associated with writing workers' compensation and employers' liability insurance, which shall be expressed as a single nonintegral number to be applied equally and uniformly to the prospective loss costs approved by the Commissioner in making rates for each classification of risks utilized by that insurer.
- (6) 'Prospective loss costs'. -- That portion of a rate that does not include provisions for expenses (other than loss adjustment



expenses) or profit; and that are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

(7) 'Rate'. -- The cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and variations in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premiums.

(8) 'Supplementary rating information'. -- Includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, rate-related underwriting rule, experience rating plan, statistical plan and any other similar information needed to determine the applicable rate in effect or to be in effect.

(c) Except as provided in subsection (m) of this section, for workers' compensation and employers' liability insurance written in connection with workers' compensation insurance, the Bureau shall no longer develop or file advisory final rates that contain provisions for expenses (other than loss adjustment expenses) and profit. The Bureau shall instead develop and file for approval with the Commissioner, in accordance with this section, reference filings containing advisory prospective loss costs and the underlying loss data and other supporting statistical and actuarial information for any calculations or assumptions underlying these loss costs. Loss-based assessments, any tax levied by the State or any political subdivision of the State, licensing costs, and fees will be included in prospective loss costs.

(d) After a reference filing has been filed with the Commissioner and approved, the Bureau shall provide its member insurers with a copy of the approved reference filing. The Bureau may print and distribute manuals of prospective loss costs as well as rules and other supplementary rating information described in subsection (k) of this section.

(e) Each insurer shall independently and individually determine the final rates it will file for approval and the effective date of any rate changes. If an insurer decides to use the prospective loss costs in the approved reference filing in support of its own filing, the insurer shall make a filing for approval using the reference filing adoption form. The insurer's rates shall be the combination of the prospective loss costs and the loss multiplier contained in the reference filing adoption form. Insurers may file modifications of the prospective loss costs in the approved reference filing based on their own anticipated experience. Supporting documentation is required for any upward or downward modifications of the prospective loss costs in the approved reference filing. A filing made with the Commissioner by an insurer under this subsection is deemed to be approved, if not disapproved by the Commissioner in writing within 60 days after the filing is made.

(f) The summary of supporting information form shall contain a reference to examples of how to apply an insurer's loss cost modification factor to the Bureau's prospective loss costs. Insurers may vary expense loads by individual classification or grouping. Insurers may use variable or



fixed expense loads or a combination of these to establish their expense loadings. Each filing that varies the expense load by class shall specify the expense factor applicable to each class and shall include information supporting the justification for the variation. However, insurers shall file data in accordance with the uniform statistical plan approved by the Commissioner. Insurers may offer premium discount plans.

(g) An insurer may request to have its loss multiplier remain on file and reference all subsequent prospective loss costs reference filings. Upon receipt of subsequent approved Bureau reference filings, the insurer's rates shall be the combination of the prospective loss costs and the loss multiplier contained in the reference filing adoption form on file with the Commissioner, and will be effective on or after the effective date of the prospective loss costs. The insurer need not file anything further with the Commissioner. If an insurer that has filed to have its loss multiplier remain on file with the Department intends to delay, modify, or not adopt a particular Bureau reference filing, the insurer must make an appropriate filing with the Commissioner. The insurer's filed loss multiplier shall remain in effect until the insurer withdraws it or files and receives approval of a revised reference filing adoption form.

(h) An insurer may file such other information that the insurer considers relevant and shall provide such other information as may be requested by the Commissioner. When a filing is not accompanied by the information required under this section, the Commissioner shall inform the filer within 30 days after the initial filing that the filing is incomplete and describe what additional information is required. A filing is complete when the required information is furnished or when the filer certifies to the Commissioner that the additional information required by the Commissioner is not maintained or cannot be provided.

(i) To the extent that an insurer's final rates are determined solely by applying its loss multiplier, as presented in the reference filing adoption form, to the prospective loss costs contained in the Bureau's reference filing and printed in the Bureau's rating manual, the insurer need not develop or file its final rate pages with the Commissioner. If an insurer chooses to print and distribute final rate pages for its own use, based solely upon the application of its filed loss costs, the insurer need not file those pages with the Commissioner. If the Bureau does not print the loss costs in its manual, the insurer must submit its rates to the Commissioner.

(j) For reference filings filed by the Bureau:

(1) If the insurer has filed to have its loss multiplier remain on file, applicable to subsequent reference filings, and a new reference filing is filed and approved and if:

- a. The insurer decides to use the revision of the prospective loss costs and effective date as filed, then the insurer does not file anything with the Commissioner. Rates are the combination of the prospective loss costs and the on-file loss multiplier and become effective on the effective date of the loss costs.
- b. The insurer decides to use the prospective loss costs as filed but with a different effective date, then the insurer must notify

the Commissioner of its effective date before the effective date of the loss costs.

c. The insurer decides to use the revision of the prospective loss costs, but wishes to change its loss multiplier, then the insurer must file for approval a revised reference filing adoption form before the effective date of the reference filing.

d. The insurer decides not to revise its rates using the prospective loss costs, then the insurer must notify the Commissioner before the effective date of the loss costs.

(2) If an insurer has not elected to have its loss multiplier remain on file, applicable to future prospective loss costs reference filings, and a new reference filing is filed and approved, and if:

a. The insurer decides to use the prospective loss costs to revise its rates, then the insurer must file a reference filing adoption form for approval including its effective date.

b. The insurer decides not to use the revisions, then the insurer does not file anything with the Commissioner.

(k) The Bureau shall file with the Commissioner, for approval, filings containing a revision of rules and supplementary rating information. This includes policy-writing rules, rating plans, classification codes and descriptions, and rules that include factors or relativities, such as employers' liability increased limits factors, classification relativities, or similar factors, but excludes minimum premiums. The Bureau may print and distribute manuals of rules and supplementary rating information, excluding minimum premiums.

(l) If a new filing of rules, relativities, and supplementary rating information is filed by the Bureau and approved and if:

(1) The insurer decides to use the revisions and effective date as filed together with the loss multiplier on file with the Commissioner, then the insurer shall not file anything with the Commissioner.

(2) The insurer decides to use the revisions as filed but with a different effective date, then the insurer must notify the Commissioner of its effective date before the approved Bureau filing's effective date.

(3) The insurer decides not to use the revision, then the insurer must notify the Commissioner before the Bureau filing's effective date.

(4) The insurer decides to use the revision with modifications, then the insurer must file the modification with the Commissioner, for approval, specifying the basis for the modification and the insurer's proposed effective date if different than the Bureau filing's effective date.

(m) The Bureau shall file all of the following with the Commissioner:

(1) Final workers' compensation rates and rating plans for the residual market.

(2) The uniform classification plan and rules.

(3) The uniform experience rating plan and rules.

(4) A uniform policy form to be used by member insurers for voluntary and residual market business.

(5) Advisory manual workers' compensation rates to be used for the sole purpose of computing the premium tax liability of self-insurers under G.S. 105-228.5.

(n) The rates filed under subdivision (m)(1) of this section shall be set at levels to self-fund the residual market, provide adequate premiums to pay losses and expenses, establish appropriate reserves, and provide a reasonable margin for underwriting profit and contingencies.

(o) Every insurer shall adhere to the uniform classification plan, experience rating plan, and policy form filed by the Bureau."

**Sec. 4.** Effective September 1, 1997, G.S. 58-36-100(a), as enacted in Section 3 of this act, reads as rewritten:

"(a) Nothing in this section requires the Bureau or its member insurers to refile rates previously implemented before two years after the effective date of this section. Any member insurer of the Bureau may continue to use all rates and deviations filed and approved for its use until disapproved, or the insurer makes its own filing to change its rates, either by making an independent filing or by filing a reference filing adoption form adopting the Bureau's prospective loss costs, or modification thereof. Except as provided in subsection (m) of this section, with the initial prospective loss costs reference filing, the Bureau shall no longer develop or file any minimum premiums, minimum premium formulas, or expense constants. If an insurer wishes to amend minimum premium formulas, it must ~~file, for approval,~~ file the minimum premium rules, formulas, or amounts it proposes to use."

**Sec. 5.** Effective September 1, 1997, G.S. 58-36-100(e), as enacted in Section 3 of this act, reads as rewritten:

"(e) Each insurer shall independently and individually determine the final rates it will file ~~for approval~~ and the effective date of any rate changes. If an insurer decides to use the prospective loss costs in the approved reference filing in support of its own filing, the insurer shall make a filing ~~for approval~~ using the reference filing adoption form. The insurer's rates shall be the combination of the prospective loss costs and the loss multiplier contained in the reference filing adoption form. Insurers may file modifications of the prospective loss costs in the approved reference filing based on their own anticipated experience. Supporting documentation is required for any upward or downward modifications of the prospective loss costs in the approved reference filing. ~~A filing made with the Commissioner by an insurer under this subsection is deemed to be approved, if not disapproved by the Commissioner in writing within 60 days after the filing is made."~~

**Sec. 6.** Effective September 1, 1997, G.S. 58-36-100(g), as enacted in Section 3 of this act, reads as rewritten:

"(g) An insurer may request to have its loss multiplier remain on file and reference all subsequent prospective loss costs reference filings. Upon receipt of subsequent approved Bureau reference filings, the insurer's rates shall be the combination of the prospective loss costs and the loss multiplier contained in the reference filing adoption form on file with the Commissioner, and will be effective on or after the effective date of the prospective loss costs. The insurer need not file anything further with the

Commissioner. If an insurer that has filed to have its loss multiplier remain on file with the Department intends to delay, modify, or not adopt a particular Bureau reference filing, the insurer must make an appropriate filing with the Commissioner. The insurer's filed loss multiplier shall remain in effect until the insurer withdraws it or files ~~and receives approval~~ of a revised reference filing adoption form. The provisions of G.S. 58-40-20, 58-40-30, 58-40-35, and 58-40-45 apply to filings made by insurers under this section."

**Sec. 7.** Effective September 1, 1997, G.S. 58-36-100(j), as enacted in Section 3 of this act, reads as rewritten:

"(j) For reference filings filed by the Bureau:

- (1) If the insurer has filed to have its loss multiplier remain on file, applicable to subsequent reference filings, and a new reference filing is filed and approved and if:
  - a. The insurer decides to use the revision of the prospective loss costs and effective date as filed, then the insurer does not file anything with the Commissioner. Rates are the combination of the prospective loss costs and the on-file loss multiplier and become effective on the effective date of the loss costs.
  - b. The insurer decides to use the prospective loss costs as filed but with a different effective date, then the insurer must notify the Commissioner of its effective date before the effective date of the loss costs.
  - c. The insurer decides to use the revision of the prospective loss costs, but wishes to change its loss multiplier, then the insurer must file ~~for approval~~ a revised reference filing adoption form before the effective date of the reference filing.
  - d. The insurer decides not to revise its rates using the prospective loss costs, then the insurer must notify the Commissioner before the effective date of the loss costs.
- (2) If an insurer has not elected to have its loss multiplier remain on file, applicable to future prospective loss costs reference filings, and a new reference filing is filed and approved, and if:
  - a. The insurer decides to use the prospective loss costs to revise its rates, then the insurer must file a reference filing adoption form ~~for approval~~ including its effective date.
  - b. The insurer decides not to use the revisions, then the insurer does not file anything with the Commissioner."

**Sec. 8.** Effective September 1, 1997, G.S. 58-36-100(l), as enacted in Section 3 of this act, reads as rewritten:

"(l) If a new filing of rules, relativities, and supplementary rating information is filed by the Bureau and approved and if:

- (1) The insurer decides to use the revisions and effective date as filed together with the loss multiplier on file with the Commissioner, then the insurer shall not file anything with the Commissioner.
- (2) The insurer decides to use the revisions as filed but with a different effective date, then the insurer must notify the Commissioner of its effective date before the approved Bureau filing's effective date.

- (3) The insurer decides not to use the revision, then the insurer must notify the Commissioner before the Bureau filing's effective date.
- (4) The insurer decides to use the revision with modifications, then the insurer must file the modification with the Commissioner, ~~for approval,~~ specifying the basis for the modification and the insurer's proposed effective date if different than the Bureau filing's effective date."

**Sec. 9.** Notwithstanding G.S. 58-36-15(f), the Bureau may make its 1995 filing after September 1, 1995.

**Sec. 10.** There is appropriated from the Department of Insurance Fund under G.S. 58-6-25 to the Department of Insurance the sum of two hundred thousand nine hundred thirty dollars (\$200,930) for fiscal year 1995-96 and the sum of one hundred eighty-two thousand eighty-eight dollars (\$182,088) for fiscal year 1996-97 to defray the Department's costs in reviewing filings under this act and otherwise implementing the provisions of this act.

**Sec. 11.** Section 10 of this act is effective July 1, 1995. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of July, 1995.

H.B. 353

## CHAPTER 506

# AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DRIVING WHILE IMPAIRED.

*The General Assembly of North Carolina enacts:*

PART I.-----ALLOWING JUDGES TO ORDER AN IGNITION INTERLOCK SYSTEM INSTALLED ON ANY VEHICLE DRIVEN AS A CONDITION OF A LIMITED DRIVING PRIVILEGE IN ORDER TO PREVENT DRIVING AFTER DRINKING.

**Section 1.** G.S. 20-179.3 is amended by adding new subsections to read:

"(g3) Ignition Interlock Allowed. -- A judge may include all of the following in a limited driving privilege order:

- (1) A restriction that the applicant may operate only a designated motor vehicle.
- (2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.
- (3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle.

(g4) The restrictions set forth in subsection (g3) of this section do not apply to a motor vehicle that meets all of the following requirements:

- (1) Is owned by the applicant's employer.
- (2) Is operated by the applicant solely for work-related purposes.



- (3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege."

**PART II.-----REQUIRING ALL PERSONS TO OBTAIN A SUBSTANCE ABUSE ASSESSMENT PRIOR TO BEING GRANTED A LIMITED DRIVING PRIVILEGE.**

**Sec. 2.** G.S. 20-179.3(b) reads as rewritten:

"(b) Eligibility. --

- (1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:
  - a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;
  - b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;
  - c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving; ~~and~~
  - d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired ~~driving, driving; and~~
  - e. The person has obtained and filed with the court a substance abuse assessment of the type specified in G.S. 20-179(m).

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e).

- (2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and
  - a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or
  - b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege."

**PART III.-----RAISING TO AGE 21 THE PROHIBITION AGAINST DRIVING AFTER DRINKING ANY AMOUNT OF ALCOHOL AND**

# MAKING CORRESPONDING CHANGES TO THE REVOCATION STATUTES.

**Sec. 3.** G.S. 20-13.2(b) reads as rewritten:

"(b) If a person is convicted of an offense involving impaired driving and the offense occurs while he is a provisional licensee, less than 21 years old, his license must be revoked under this section in addition to any other revocation required or authorized by law."

**Sec. 4.** G.S. 20-13.2(c) reads as rewritten:

"(c) If a person willfully refuses to submit to a chemical analysis pursuant to G.S. 20-16.2 while he is a provisional licensee, less than 21 years old, his license must be revoked under this section, in addition to any other revocation required or authorized by law. A revocation order entered under authority of this subsection becomes effective at the same time as a revocation order issued under G.S. 20-16.2 for the same willful refusal."

**Sec. 5.** G.S. 20-13.2(d) reads as rewritten:

"(d) The length of revocation under this section shall be equal to the number of days from the date of the charge to the provisional licensee's eighteenth birthday or 45 days whichever is longer, one year. Revocations under this section run concurrently with any other revocations, but a limited driving privilege issued pursuant to law does not authorize a provisional licensee to drive if his license is revoked under this section, revocations."

**Sec. 6.** G.S. 20-138.3 reads as rewritten:

"§ 20-138.3. Driving by provisional licensee person less than 21 years old after consuming alcohol or drugs.

(a) Offense. -- It is unlawful for a provisional licensee person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a provisional licensee person less than 21 years old does not violate this section if he drives with a controlled substance in his blood which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Punishment; Effect When Impaired Driving Offense Also Charged. -- The offense in this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable must be imposed.

(d) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20-179.3. This subsection shall apply only if the person meets both of the following requirements:

- (1) Is 18, 19, or 20 years old on the date of the offense.
- (2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(c) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

**PART IV.-----PROHIBITING AN OPEN CONTAINER OF ALCOHOLIC BEVERAGE IN A MOTOR VEHICLE WHEN A DRIVER HAS BEEN DRINKING.**

**Sec. 7.** G.S. 20-17 reads as rewritten:

*"§ 20-17. Mandatory revocation of license by Division.*

The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

- (1) Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.
- (2) Either of the following impaired driving offenses:
  - a. Impaired driving under G.S. 20-138.1.
  - b. Impaired driving under G.S. 20-138.2 when the person convicted did not take a chemical test at the time of the offense or the person took a chemical test at the time of the offense and the test revealed that the person had an alcohol concentration at any relevant time after driving of less than 0.04 or of 0.08 or more.
- (3) Any felony in the commission of which a motor vehicle is used.
- (4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).
- (5) Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.
- (6) Conviction upon two charges of reckless driving committed within a period of 12 months.
- (7) Conviction upon one charge of reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.
- (8) Conviction of using a false or fictitious name or giving a false or fictitious address in any application for a drivers license, or learner's permit, or any renewal or duplicate thereof, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly permitting or allowing another to commit any of the foregoing acts.
- (9) Death by vehicle as defined in G.S. 20-141.4.
- (10) Speeding in excess of 55 miles per hour and at least 15 miles per hour over the legal limit in violation of G.S. 20-141(j).
- (11) Conviction of assault with a motor vehicle.
- (12) A second or subsequent conviction of transporting an open container of alcoholic beverage under G.S. 20-138.7."

**Sec. 8.** G.S. 20-19 is amended by adding a new subsection to read:  
"(g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of revocation is six months for conviction of a second offense and one year for conviction of a third or subsequent offense."

**Sec. 9.** Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-138.7. *Transporting an open container of alcoholic beverage after consuming alcohol.*

(a) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of this section shall be punished as a Class 3 misdemeanor for the first offense and shall be punished as a Class 2 misdemeanor for a second or subsequent offense. A fine imposed for a second or subsequent offense may not exceed one thousand dollars (\$1,000). Violation of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. A violation of this section shall be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, 'passenger area of a motor vehicle' means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the

trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term 'alcoholic beverage' is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

#### **PART V.-----CLARIFYING THE AUTHORITY OF LAW ENFORCEMENT OFFICERS TO ARREST WITHOUT A WARRANT FOR THE OFFENSE OF IMPAIRED DRIVING.**

**Sec. 10.** G.S. 15A-401(b) reads as rewritten:

"(b) Arrest by Officer Without a Warrant. --

- (1) Offense in Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense in the officer's presence.
- (2) Offense Out of Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe:
  - a. Has committed a felony; or
  - b. Has committed a misdemeanor, and:
    1. Will not be apprehended unless immediately arrested, or
    2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or
  - c. Has committed a misdemeanor under G.S. 14-72.1 or G.S. 14-134.3; G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or
  - d. Has committed a misdemeanor under G.S. 14-33(a), G.S. 14-33(b)(1), or G.S. 14-33(b)(2) when the offense was committed by a person who is the spouse or former spouse of the alleged victim or by a person with whom the alleged victim is living or has lived as if married.
- (3) Repealed by Session Laws 1991, c. 150."

#### **PART VI.-----STANDARDIZING STATUTORY REGULATIONS REGARDING BLOOD ALCOHOL CONCENTRATION.**

**Sec. 11.** G.S. 20-179(d) reads as rewritten:

"(d) Aggravating Factors to Be Weighed. -- The judge must determine before sentencing under subsection (f) whether any of the aggravating



factors listed below apply to the defendant. The judge must weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

- (1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of ~~0.20~~ 0.16 or more within a relevant time after the driving.
- (2) Especially reckless or dangerous driving.
- (3) Negligent driving that led to an accident causing property damage in excess of five hundred dollars (\$500.00) or personal injury.
- (4) Driving by the defendant while his driver's license was revoked.
- (5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.
- (6) Conviction under G.S. 20-141(j) of speeding by the defendant while fleeing or attempting to elude apprehension.
- (7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.
- (8) Passing a stopped school bus in violation of G.S. 20-217.
- (9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor must occur during the same transaction or occurrence as the impaired driving offense."

**Sec. 12.** G.S. 20-179(e) reads as rewritten:

"(e) Mitigating Factors to Be Weighed. -- The judge must also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge must weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

- (1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed ~~0.11~~ 0.09 at any relevant time after the driving.
- (2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.
- (3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.
- (4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.

- (5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.
- (6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.
- (7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor must occur during the same transaction or occurrence as the impaired driving offense."

**Sec. 13.** G.S. 20-179(m) reads as rewritten:

"(m) Assessment and Treatment Required in Certain Cases. -- If a defendant being sentenced under this section is placed on probation, he shall be required as a condition of that probation to obtain a substance abuse assessment.

The judge shall require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. Unless a different time limit is specified in the court's judgment, the defendant shall schedule the assessment within 30 days from the date of the judgment. Any agency performing assessments shall give written notification of its intention to do so to the area mental health authority in the catchment area in which it is located and to the Department of Human Resources. The Secretary of the Department of Human Resources may adopt rules to implement the provisions of this subsection, and these rules may include provisions to allow defendant to obtain assessments and treatment from agencies not located in North Carolina. The assessing agency shall give the client a standardized test capable of providing uniform research data, including, but not limited to, demographic information, defendant history, assessment results and recommended interventions, approved by the Department of Human Resources to determine chemical dependency. A clinical interview concerning the general status of the defendant with respect to chemical dependency shall be conducted by the assessing agency before making any recommendation for further treatment. A recommendation made by the assessing agency shall be signed by a 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the Department of Human Resources.

If the assessing agency recommends that the defendant participate in a treatment program, the judge may require the defendant to do so, and he shall require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the Department of Correction. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation in treatment should be imposed. An order of the court shall not require the defendant to participate in any treatment program for more than 90 days

unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was ~~15~~ 0.13 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offense within five years. At the time of sentencing the judge shall require the defendant to pay one hundred twenty-five dollars (\$125.00). The payment of the fee of one hundred twenty-five dollars (\$125.00) shall be (i) fifty dollars (\$50.00) to the assessing agency and (ii) seventy-five dollars (\$75.00) to either a treatment facility or to an alcohol and drug education traffic school depending upon the recommendation made by the assessing agency. Fees received by the Area Mental Health, Developmental Disabilities, and Substance Abuse Authorities under this section shall be administered pursuant to G.S. 20-179.2(e), provided, however that the provisions of G.S. 20-179.2(c) shall not apply to monies received under this section. The operators of the local alcohol and drug education traffic school may change the length of time required to complete the school in accordance with administrative costs, provided, however that the length and the curriculum of the school shall be approved by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services and in no event shall the school be less than five hours in length. If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar (\$75.00) fee. If an area mental health facility or its contractor is providing treatment or education services to a defendant pursuant to this subsection, the area facility or its contractor may require that the defendant pay the fees prescribed by law for the services before it certifies that the defendant has completed the recommended treatment or educational program. Any determinations with regard to the defendant's ability to pay the assessment fee shall be made by the judge.

In those cases in which no substance abuse handicap is identified, that finding shall be filed with the court and the defendant shall be required to attend an alcohol and drug education traffic school. When treatment is required, the treatment agency's progress reports shall be filed with the court or the Department of Correction at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate. If the defendant is required to participate in a treatment program and he completes the recommended treatment, he does not have to attend the alcohol and drug education traffic school. Upon the completion of the court-ordered assessment and court-ordered treatment or school, the assessing or treatment agency or school shall give the Division of Motor Vehicles the original of the certificate of completion, shall provide the defendant with a copy of that certificate, and shall retain a copy of the certificate on file for a period of five years. The Division of Motor Vehicles shall not reissue the drivers license of a defendant ordered to obtain assessment, participate in a treatment program or school unless it has received the original certificate of completion from the assessing or treatment agency or school or a certificate of completion sent by the agency subsequent to a court order as hereinafter provided; provided, however that a defendant may be issued a limited driving privilege pursuant to G.S. 20-179.3. Unless the judge has waived the fee,

no certificate shall be issued unless the agency or school has received the fifty dollar (\$50.00) fee and the seventy-five dollar (\$75.00) fee as appropriate. A defendant may within 90 days after an agency decision to decline to certify, by filing a motion in the criminal case, request that a judge presiding in the court in which he was convicted review the decision of an assessment or treatment agency to decline to certify that the defendant has completed the assessment or treatment. The agency whose decision is being reviewed shall be notified at least 10 days prior to any hearing to review its decision. If the judge determines that the defendant has obtained an assessment, has completed the treatment, or has made an effort to do so that is reasonable under the circumstances, as the case may be, the judge shall order that the agency send a certificate of completion to the Division of Motor Vehicles.

The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program."

**Sec. 14.** G.S. 75A-10(b1) reads as rewritten:

"(b1) No person shall operate any motorboat or motor vessel while underway on the waters of this State:

- (1) While under the influence of an impairing substance, or
- (2) After having consumed sufficient alcohol that he has, at any relevant time after the boating, an alcohol concentration of 0.10 0.08 or more.

The fact that a person charged with violating this subsection is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this subsection or subsection (b) above.

The relevant definitions contained in G.S. 20-4.01 shall apply to this subsection and subsection (b) above."

PART VII.-----EFFECTIVE DATE.

**Sec. 15.** This act becomes effective September 15, 1995, and applies to offenses committed on or after that date and to limited driving privileges issued on or after that date. This act shall not be construed to abate or affect any charges or violations occurring before the effective date of this act.

In the General Assembly read three times and ratified this the 28th day of July, 1995.

H.B. 230

## CHAPTER 507

AN ACT TO APPROPRIATE FUNDS TO PROVIDE EXPANSION EXPENDITURES AND CAPITAL IMPROVEMENTS FOR STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES.

*The General Assembly of North Carolina enacts:*

### PART 1. INTRODUCTION AND TITLE OF ACT

**Section 1.** The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the Executive Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

**Sec. 1.1.** This act shall be known and cited as "The Expansion and Capital Improvements Appropriations Act of 1995".

## **PART 2. EXPANSION - RECURRING/GENERAL FUND**

**Sec. 2.** Appropriations of recurring funds from the General Fund of the State for the expansion of the State departments, institutions, and agencies, and for other purposes as enumerated are made for the biennium ending June 30, 1997, according to the schedule that follows.

<u>Expansion - Recurring - General Fund</u>	<u>1995-96</u>	<u>1996-97</u>
Judicial	\$2,854,907	\$3,170,506
Office of the Governor	138,608	183,383
Department of Secretary of State	201,537	201,537
Department of State Treasurer	4,448,000	4,448,000
Department of Public Education	4,863,448	32,178,818
University of North Carolina - Board of Governors Institutional Programs	144,000	487,646
Department of Justice	594,005	698,711
Department of Administration	348,704	348,704
Department of Insurance	485,000	1,985,000
Department of Labor	36,000	39,348
Department of Commerce	267,041	267,041
Department of Environment, Health, and Natural Resources	3,299,750	3,259,750
Department of Human Resources		
Division of Aging	515,000	515,000
Office of the Secretary	400,000	400,000



Division of Social Services	942,067	853,199
Division of Services for the Blind	425,000	425,000
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	13,000,000	18,182,213
Division of Vocational Rehab	1,135,000	1,135,000
Division of Youth Services	991,371	1,610,541
Division for Services for Deaf and Hard of Hearing	500,000	1,500,000
Division of Child Development	290,124	310,243
<b>Total Department of Human Resources</b>	<b>\$18,198,562</b>	<b>\$24,931,196</b>
Department of Correction	7,615,200	45,235,450
Department of Revenue	3,265,811	3,040,615
Department of State Auditor	103,271	103,271
Department of Cultural Resources	740,673	887,257
Department of Crime Control and Public Safety	200,542	199,872
Office of State Controller	1,474,842	1,593,851
Board of Elections	1,000	1,000
Debt Service	15,031,552	24,369,052
Reserve for Salary Adjustments	800,000	800,000
Reserve for Compensation Increase	99,336,570	99,336,570
Department of Community Colleges	11,031,685	11,031,685
Reserve for Child Support Legislation	170,000	170,000
Reserve for Administrative Rules Process	167,000	167,000
<b>GRAND TOTAL CURRENT OPERATIONS</b>		
<b>GENERAL FUND RECURRING</b>	<b>\$175,817,708</b>	<b>\$259,135,263</b>

### PART 3. EXPANSION - NONRECURRING/GENERAL FUND

#### EXPANSION - NONRECURRING/GENERAL FUND

Sec. 3. Appropriations of nonrecurring funds from the General Fund of the State for the expansion of the State departments, institutions, and

agencies, and for other purposes as enumerated are made for the biennium ending June 30, 1997, according to the schedule that follows. Amounts set out in brackets are reductions from General Fund appropriations for the 1995-96 and 1996-97 fiscal years.

<u>Expansion - Nonrecurring- - General Fund</u>	<u>1995-96</u>	<u>1996-97</u>
Judicial	\$2,722,228	\$298,062
General Assembly	285,000	--
Office of the Governor	559,571	1,000,000
Office of State Budget and Management	75,000	--
Department of Public Education	32,526,146	--
Department of Secretary of State	10,700	--
Reserve for Administrative Rules Process	167,000	167,000
University of North Carolina - Board of Governors Institutional Programs	1,678,646	500,000
Department of Justice	389,380	295,294
Department of Administration	216,735	--
Department of Insurance	515,000	--
Department of Agriculture	200,000	--
Department of Commerce	6,650,000	1,250,000
Rural Economic Dev. Center	3,800,000	--
MCNC	(1,000,000)	--
Department of Environment, Health, and Natural Resources	3,926,190	500,000
Department of Human Resources		
Division of Aging	100,000	--
Division of Child Development	950,000	100,000
Office of the Secretary	2,000,000	--
Division of Social Services	300,000	--

Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	400,000	--
<b>Total Department of Human Resources</b>	<b>\$3,750,000</b>	<b>100,000</b>
Department of Correction	2,833,456	561,971
Department of Revenue	8,040,412	116,600
Department of Cultural Resources	10,371,326	--
Department of Crime Control and Public Safety	754,932	125,000
Office of State Controller	6,490,457	--
State Board of Elections	575,000	3,500,000
Department of State Auditor	12,800	--
Department of Community Colleges	15,551,317	--
Reserve for Child Support Legislation	399,300	--
Reserve for Compensation Increase	3,521,609	--
Reserve for Administrative Rules Process	40,000	--
<b>GRAND TOTAL - CURRENT OPERATIONS- GENERAL FUND NONRECURRING</b>	<b>\$104,895,205</b>	<b>\$8,246,927</b>

#### PART 4A. EXPANSION/CAPITAL/HIGHWAY FUND

**Sec. 4A.** Appropriations of funds from the Highway Fund of the State for the expansion of the Department of Transportation are made for the biennium ending June 30, 1997, and for capital improvements for the 1995-96 fiscal year, according to the following schedule.

	1995-96	1996-97
<b>A. EXPANSION PROJECTS</b>		
1. DOT Administration	\$7,886,537	\$8,136,463
2. Division of Highways		
a. Administration and Operations	102,849	102,849
b. State Construction		
01. Small Urban Construction	3,000,000	3,000,000

c. State Maintenance		
01. Urban System	2,420,000	5,420,000
02. Contract Resurfacing	2,703,108	5,000,000
03. Primary	2,000,000	2,346,171
3. Division of Motor Vehicles	5,429,206	4,564,504
4. State Aid for Public Transportation	5,800,000	5,800,000
5. Reserve for Asphalt Plant Cleanup	1,000,000	1,000,000
6. Reserve for Pay Increase	7,914,055	7,914,055
7. Reserve for PCB Cleanup	1,000,000	--
Appropriations to Other State Agencies		
a. General Assembly	200,000	--
b. Crime Control and Public Safety	<u>1,662,525</u>	<u>1,035,175</u>
Total	\$41,118,280	\$44,319,217

## B. CAPITAL IMPROVEMENTS PROJECTS

1. Roof Replacements Statewide	\$ 432,900
2. HVAC Replacements Statewide - DMV	123,800
3. Safety Upgrades Statewide - DMV	123,800
4. Fire Alarm Renovations Materials and Test Lab, Raleigh, NC	72,800
5. Parking Lot Repairs Statewide - DMV	133,700
6. Roadside Environmental Warehouse Sylva, NC	463,000
7. District Engineer's Office Marion, NC	590,000
8. DMV/SHP Supplemental Funding Durham, NC	69,890
9. DMV/SHP Supplemental Funding Salisbury, NC	110,000
10. Equipment Shop Washington, NC	916,000
11. Equipment Shop Wentworth, NC	911,000
12. Equipment Shop Kinston, NC	916,000
13. Equipment Shop Meadows, NC	913,000
14. Materials and Test Lab Asheville, NC	389,000
15. DMV/SHP Addition and Renovation Morganton, NC	272,700

16. Exterior Renovation, Transportation Building, Raleigh, NC	169,900
17. Building and Land Purchase Williamston, NC	368,000
18. Electrical Upgrades Transportation Building, Raleigh, NC	<u>1,922,100</u>
Total	\$8,897,590

Fuel Tank Replacement - State Highway Patrol  
 Provides funds for replacement of fuel tanks at 15 sites @ \$32,000 per site and \$20,000 for testing equipment. \$ 500,000.

#### PART 4B. BUDGET AVAILABILITY STATEMENT REVISED

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### AVAILABILITY

Sec. 4B. Section 5 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 5. The General Fund and availability used in developing the 1995-97 budget is as shown below:

(1) Composition of the 1995-97 beginning availability:		
a. Revenue collections in 1994-95 in excess of authorized estimates		(\$ Million)
		\$192.00
b. Unexpended appropriations during 1994-95 (reversions)		162.40
c. Balance brought forward		33.40
Subtotal		<u>387.80</u>
d. Transfer to Savings Reserve		96.90
e. Transfer to Reserve for Repair and Renovations		<u>125.00</u>
Ending Fund Balance		\$ 165.9
	(\$ Million)	(\$ Million)
	<u>1995-96</u>	<u>1996-97</u>
(2) Beginning Unrestricted Fund Balance	\$ 165.9	\$ -
(3) Revenues Based on Existing Tax Structure	10.019.6	10.658.1
(4) 94-95 Reserve for Tax Reductions	28.1	-
Changes:		

1. Tax Changes



(a)	Personal Income	-235.0	-244.1
(b)	Intangibles Repeal	-124.4	-124.5
(c)	H 396 (C495) Ports Tax Credit	<u>-7</u>	<u>-7</u>
	H 55 (C477) Aquaculture Sales Tax		
	Exemption	<u>-1</u>	<u>-1</u>
	H 759 (C472) Nonprofit Home Sales		
	Tax Refunds	<u>-1.4</u>	<u>-1.4</u>
	H 223 (C474) Soft Drink Tax	-	<u>-9.6</u>
	H 360 (C451) RR Diesel Sales Tax		
	Exemption	<u>-1.2</u>	<u>-1.5</u>
	H 718 (C456) State Parks Trust Fund	-	<u>-18.0</u>
	Total Tax Changes	<u>-362.8</u>	<u>-399.9</u>
2.	Local Sales Tax -		
	Local Government Commission	1.5	1.5
3.	Insurance Regulatory Charges	<u>3.7</u>	<u>3.7</u>
		4.7	4.2
4.	Treasurer's Banking Fees	<u>-7</u>	<u>-7</u>
5.	Disproportionate Share		
	Receipts	106.9	117.7
6.	Investment Income Electronic		
	Fund Transfers	2.0	2.0
Availability		<u>\$9,967.6</u>	<u>\$10,413.7</u>
		<u>\$9,965.2</u>	<u>\$10,382.9"</u>

## PART 6. GENERAL PROVISIONS

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

### BUDGETING OF PILOT PROGRAMS

**Sec. 6.** (a) Any program designated by the General Assembly as experimental, model, or pilot shall be shown as a separate budget item and shall be considered as an expansion item until a succeeding General Assembly reapproves it.

Any new program funded in whole or in part through a special appropriations bill shall be designated as an experimental, model, or pilot program.

(b) The Governor shall submit to the General Assembly with his proposed budget a report of which items in the proposed budget are subject to the provisions of this section.

Requested by: Senators Plyler, Perdue, Odom

### AUTHORIZATION OF PRIVATE LICENSE TAGS ON STATE-OWNED MOTOR VEHICLE

**Sec. 6.1.** (a) Pursuant to the provisions of G.S. 14-250, for the 1995-97 fiscal biennium, the General Assembly authorizes the use of private license tags on State-owned motor vehicles only for the State Highway Patrol and for the following:

<u>Department</u>	<u>Exemption Category</u>	<u>Number</u>
-------------------	---------------------------	---------------

Motor Vehicles	License and Theft	97
Justice	SBI Agents	277
Correction	Probation/Parole Surveillance Officers (intensive probation)	25
Crime Control and Public Safety	ALE Officers	92
Revenue		3
Capital Area Police		2

(b) The 92 ALE vehicles authorized by this section to use private license tags shall be distributed as follows:

- (1) 54 among Agent I officers;
- (2) 20 among Agent II officers;
- (3) 1 to the Deputy Director;
- (4) 12 to the District Offices/Extra Vehicles; and
- (5) 5 to the Director, to be distributed at the Director's discretion.

(c) Except as provided in this section, all State-owned motor vehicles shall bear permanent registration plates issued under G.S. 20-84.

Requested by: Senators Plyler, Perdue, Odom

#### **AUTHORIZATION OF PRIVATE LICENSE TAGS ON STATE-OWNED MOTOR VEHICLE**

**Sec. 6.2.** (a) G.S 18B-500(f) is repealed.

(b) G.S. 20-39(h) reads as rewritten:

"(h) The Commissioner, notwithstanding any other provision of this Chapter, may lawfully and to the extent necessary, provide local, State or federal law-enforcement officers on special undercover assignments with motor vehicle drivers licenses and motor vehicle registration plates under assumed names using false or fictitious addresses. Such registration plates shall only be used on publicly owned or leased vehicles. Requests for these licenses and registration plates shall be made to the Commissioner by the head of the local, State or federal law-enforcement agency and be accompanied by approval in writing from the Director of the State Bureau of Investigation upon a specific finding by the Director that the request is justified and necessary. The Director shall keep a record of all such licenses, registration plates, assumed names, false or fictitious addresses, and law-enforcement officers using the licenses or registration plates, and shall request the immediate return of any license or registration plate that is no longer necessary. Licenses and registration plates provided under this subsection shall expire six months after initial issuance or subsequent validation after the request for extension has been approved in writing by the Director of the State Bureau of Investigation. The head of the local, State or federal law-enforcement agency shall be responsible for the use of the licenses and registration plates and shall return them immediately to the Commissioner for cancellation upon either (i) their expiration, (ii) request of the Director of the State Bureau of Investigation, or (iii) request of the Commissioner. Failure to return a license or registration plates issued pursuant to this subsection shall be punished as a Class 2 misdemeanor. At

no time shall the number of valid licenses and registration plates issued under this act exceed ~~one hundred, fifty~~, and those issued shall be strictly monitored by the Director. All of the private registration plates issued to special agents of the State Bureau of Investigation under the Department of Justice and to alcohol law enforcement agents under the Department of Crime Control and Public Safety, pursuant to G.S. 14-250, may be fictitious plates and shall not be counted in the total number of fictitious plates authorized by this subsection."

(c) G.S. 114-17.1 is repealed.

Requested by: Senators Plyler, Perdue, Odom

### **DELETE DUPLICATIVE REPORT ON OVEREXPENDITURES OF FUNDS**

**Sec. 6.3.** G.S. 143-23(a1) reads as rewritten:

"(a1) No transfers may be made between objects or line items in the budget of any department, institution, or other spending agency; however, with the approval of the Director of the Budget, a department, institution, or other spending agency may spend more than was appropriated for an object or line item if the overexpenditure is:

- (1) In a purpose or program for which funds were appropriated for that fiscal period and the total amount spent for the purpose or program is no more than was appropriated for the purpose or program for the fiscal period;
- (2) Required to continue a purpose or program because of unforeseen events, so long as the scope of the purpose or program is not increased;
- (3) Required by a court, Industrial Commission, or administrative hearing officer's order or award or to match unanticipated federal funds;
- (4) Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or
- (5) Required to call out the National Guard.

~~If the total of all overexpenditures of a line item approved by the Director of the Budget for a fiscal year for the purposes set out in subdivisions (1) and (2) of this subsection exceeds ten percent (10%) of the line item amount in the budget enacted by the General Assembly, the Director of the Budget shall report monthly to the Joint Legislative Commission on Governmental Operations. The report shall include the reasons that make overexpenditures necessary and any unforeseen events necessitating overexpenditures that occurred after the budget was enacted by the General Assembly.~~

The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division of the Legislative Services Office, and the State Auditor the reason if the amount expended for a purpose or program is more than the amount appropriated for it from all sources. If the overexpenditure was authorized under subdivision (2) of this subsection, the Director of the Budget shall identify in the report the unforeseen event that required the overexpenditure."

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Creech, Esposito

### **NO EXPANSION OF PERFORMANCE BUDGETING**

**Sec. 6.5.** Notwithstanding any other provision of law, no funds from any source shall be used to expand the areas covered by the performance budget format or any other aspect of performance budgeting for the 1996-97 or subsequent fiscal years until such expansion is specifically authorized by the General Assembly.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Creech, Esposito

### **RESERVE FOR THE ADMINISTRATIVE RULES PROCESS**

**Sec. 6.6.** Funds in the amount of two hundred seven thousand dollars (\$207,000) for the 1995-96 fiscal year and one hundred sixty-seven thousand dollars (\$167,000) for the 1996-97 fiscal year are appropriated in this act to the Office of State Budget and Management. Reserve for the Administrative Rules Process. The Director of the Budget shall allocate funds from this reserve to the Office of State Budget and Management, the Office of Administrative Hearings, and other agencies, as necessary to implement the provisions of Section 27.8 of this act.

## **PART 7. SALARIES AND BENEFITS**

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

### **GOVERNOR/COUNCIL OF STATE/SALARY INCREASES**

**Sec. 7.1.** (a) G.S. 147-11(a) reads as rewritten:

"(a) The salary of the Governor shall be ~~ninety-seven thousand six hundred dollars (\$97,600)~~ ninety-eight thousand five hundred seventy-six dollars (\$98,576) annually, payable monthly."

(b) The annual salaries for the members of the Council of State, payable monthly, for the 1995-96 and 1996-97 fiscal years are:

<u>Council of State</u>	<u>Annual Salary</u>
Lieutenant Governor	\$87,000
Attorney General	87,000
Secretary of State	87,000
State Treasurer	87,000
State Auditor	87,000
Superintendent of Public Instruction	87,000
Agriculture Commissioner	87,000
Insurance Commissioner	87,000
Labor Commissioner	87,000

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

### **NONELECTED DEPARTMENT HEAD/SALARY INCREASES**

**Sec. 7.2.** In accordance with G.S. 143B-9, the maximum annual salaries, payable monthly, for the nonelected heads of the principal State departments for the 1995-96 and 1996-97 fiscal years are:

<u>Nonelected Department Heads</u>	<u>Annual Salary</u>
Secretary of Administration	\$85,000
Secretary of Correction	85,000
Secretary of Cultural Resources	85,000
Secretary of Commerce	85,000
Secretary of Environment, Health, and Natural Resources	85,000
Secretary of Human Resources	85,000
Secretary of Revenue	85,000
Secretary of Transportation	85,000
Secretary of Crime Control and Public Safety	85,000

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **CERTAIN EXECUTIVE BRANCH OFFICIALS/SALARY INCREASES**

**Sec. 7.3.** The annual salaries, payable monthly, for the 1995-96 and 1996-97 fiscal years for the following executive branch officials are:

<u>Executive Branch Officials</u>	<u>Annual Salary</u>
Chairman, Alcoholic Beverage Control Commission	\$ 77,365
State Controller	108,271
Commissioner of Motor Vehicles	77,365
Commissioner of Banks	77,365
Chairman, Employment Security Commission	77,365
State Personnel Director	85,000
Chairman, Parole Commission	70,643
Members of the Parole Commission	65,220
Chairman, Industrial Commission	69,510
Members of the Industrial Commission	67,817
Chairman of the Utilities Commission	81,381
Commissioner of the Utilities Commission	80,381
Executive Director, Agency for Public Telecommunications	65,220
General Manager, Ports Railway Commission	58,893
Director, Museum of Art	79,274
Executive Director, Wildlife Resources Commission	66,773
Executive Director, North Carolina Housing Finance Agency	95,746
Executive Director, North Carolina Agricultural Finance Authority	75,302
Director, Office of Administrative Hearings	76,500

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **JUDICIAL BRANCH OFFICIALS/SALARY INCREASE**

**Sec. 7.4.** (a) The annual salaries, payable monthly, for specified judicial branch officials for the 1995-96 and 1996-97 fiscal years are:



<u>Judicial Branch Officials</u>	<u>Annual Salary</u>
Chief Justice, Supreme Court	\$98,576
Associate Justice, Supreme Court	96,000
Chief Judge, Court of Appeals	93,600
Judge, Court of Appeals	92,000
Judge, Senior Regular Resident Superior Court	89,500
Judge, Superior Court	87,000
Chief Judge, District Court	79,000
Judge, District Court	76,500
District Attorney	80,600
Administrative Officer of the Courts	89,500
Assistant Administrative Officer of the Courts	75,160
Public Defender	80,600

(b) The district attorney or public defender of a judicial district, with the approval of the Administrative Officer of the Courts, shall set the salaries of assistant district attorneys or assistant public defenders, respectively, in that district such that the average salaries of assistant district attorneys or assistant public defenders in that district do not exceed forty-nine thousand five hundred eighty dollars (\$49,580), and the minimum salary of any assistant district attorney or assistant public defender is at least twenty-five thousand three hundred twelve dollars (\$25,312) effective July 1, 1995.

(c) The salaries in effect for the 1994-95 fiscal year for permanent, full-time employees of the Judicial Department, except for those whose salaries are itemized in this Part, shall be increased by two percent (2%), commencing July 1, 1995.

(d) The salaries in effect for the 1994-95 fiscal year for all permanent, part-time employees of the Judicial Department shall be increased on and after July 1, 1995, by pro rata amounts of the two percent (2%).

Requested by: Senators Rand, Plyler, Perdue, Odom, Representatives Holmes, Creech, Esposito

#### **REDEFINE SERVICE FOR PURPOSES OF LONGEVITY PAY FOR ASSISTANT DISTRICT ATTORNEYS**

**Sec. 7.4A.** G.S. 7A-65(d) reads as rewritten:

"(d) In lieu of merit and other increment raises paid to regular State employees, an assistant district attorney shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, and fourteen and four-tenths percent (14.4%) after 15 years of service. 'Service' means service as an assistant district ~~attorney~~, attorney or as a district attorney."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **ASSISTANT AND DEPUTY CLERKS OF COURT/SALARY INCREASE**

**Sec. 7.6.** (a) G.S. 7A-102(c1) reads as rewritten:

"(c1) A full-time assistant clerk or a full-time deputy clerk, and up to one full-time deputy clerk serving as head bookkeeper per county, shall be paid an annual salary subject to the following minimum and maximum rates:

Assistant Clerks and Head Bookkeeper		Annual Salary
Minimum	\$21,126	\$21,549
Maximum	37,406	<u>38,154</u>
Deputy Clerks		Annual Salary
Minimum	\$16,891	\$17,229
Maximum	28,813	<u>29,389."</u>

(b) G.S. 7A-102(c) reads as rewritten:

"(c) Notwithstanding the provisions of subsection (a), the Administrative Officer of the Courts shall establish an incremental salary plan for assistant clerks and for deputy clerks based on a series of salary steps corresponding to the steps contained in the Salary Plan for State Employees adopted by the Office of State Personnel, subject to a minimum and a maximum annual salary as set forth below. On and after July 1, 1985, each assistant clerk and each deputy clerk shall be eligible for an annual step increase in his salary plan based on satisfactory job performance as determined by each clerk. Notwithstanding the foregoing, if an assistant or deputy clerk's years of service in the office of superior court clerk would warrant an annual salary greater than the salary first established under this section, that assistant or deputy clerk shall be eligible on and after July 1, 1984, for an annual step increase in his salary plan. Furthermore, on and after July 1, 1985, that assistant or deputy clerk shall be eligible for an increase of two steps in his salary plan, and shall remain eligible for a two-step increase each year as recommended by each clerk until that assistant or deputy clerk's annual salary corresponds to his number of years of service. Any person covered by this subsection who would not receive a step increase in fiscal year ~~1994-95~~ 1995-96 because that person is at the top of the salary range as it existed for fiscal year ~~1993-94~~ 1994-95 shall receive a salary increase to the maximum annual salary provided by subsection (c1) of this section."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### MAGISTRATES' PAY PLAN

Sec. 7.7. (a) G.S. 7A-171.1(a)(1) reads as rewritten:

"(1) A full-time magistrate shall be paid the annual salary indicated in the table set out in this subdivision. A full-time magistrate is a magistrate who is assigned to work an average of not less than 40 hours a week during the term of office. The Administrative Officer of the Courts shall designate whether a magistrate is full-time. Initial appointment shall be at the entry rate. A magistrate's salary shall increase to the next step every two years on the anniversary of the date the magistrate was originally appointed for increases to Steps 1 through 3, and every four years on the anniversary of the

date the magistrate was originally appointed for increases to Steps 4 through 6.

Table of Salaries of Full-Time Magistrates

Step Level		Annual Salary
Entry Rate	\$22,958	\$23,417
Step 1	25,262	25,767
Step 2	27,770	28,325
Step 3	30,506	31,116
Step 4	33,503	34,173
Step 5	36,797	37,533
Step 6	40,420	41,228."

(b) G.S. 7A-171.1(a1)(1) reads as rewritten:

"(1) The salaries of magistrates who on June 30, 1994, were paid at a salary level of less than five years of service under the table in effect that date shall be as follows:

Less than 1 year of service	\$ 18,095	18,457
1 or more but less than 3 years of service	19,025	19,406
3 or more but less than 5 years of service	20,896	21,314.

Upon completion of five years of service, those magistrates shall receive the salary set as the Entry Rate in the table in subsection (a)."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### GENERAL ASSEMBLY

Sec. 7.8. G.S. 120-3(b) reads as rewritten:

"(b) Every other member of the General Assembly shall receive increases in annual salary only to the extent of and in the amounts equal to the average increases received by employees of the State, effective upon convening of the next Regular Session of the General Assembly after enactment of these increased ~~amounts~~, amounts, except no such increase is granted upon the convening of the 1997 Regular Session of the General Assembly. Accordingly, upon convening of the ~~1995~~ 1997 Regular Session of the General Assembly, every other member of the General Assembly shall be paid an annual salary of thirteen thousand nine hundred fifty-one dollars (\$13,951) payable monthly, and an expense allowance of five hundred fifty-nine dollars (\$559.00) per month."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### GENERAL ASSEMBLY PRINCIPAL CLERKS/SALARY INCREASES

Sec. 7.9. G.S. 120-37(c) reads as rewritten:

"(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ~~fifty-four thousand dollars (\$54,000)~~ fifty-five thousand eighty dollars (\$55,080) payable monthly. The Legislative Services Commission shall review the salary of the principal

clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **SERGEANT-AT-ARMS AND READING CLERKS/SALARY INCREASES**

**Sec. 7.10.** G.S. 120-37(b) reads as rewritten:

"(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of ~~two hundred thirty-two dollars (\$232.00)~~ two hundred thirty-seven dollars (\$237.00) per week, plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **LEGISLATIVE EMPLOYEES/SALARY INCREASES**

**Sec. 7.11.** The Legislative Administrative Officer shall increase the salaries of nonelected employees of the General Assembly in effect for fiscal year 1994-95 by two percent (2%). Nothing in this act limits any of the provisions of G.S. 120-32.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **COMMUNITY COLLEGES PERSONNEL/SALARY INCREASES**

**Sec. 7.12.** The Director of the Budget shall transfer from the Reserve for Salary Increases created in this act for fiscal year 1995-96 funds to the Department of Community Colleges necessary to provide an average annual salary increase of two percent (2%), including funds for the employer's retirement and social security contributions, commencing July 1, 1995, for all permanent full-time community college institutional personnel supported by State funds. The State Board of Community Colleges shall establish guidelines for providing their salary increases to community college institutional personnel. Salary funds shall be used to provide an average annual salary increase of two percent (2%) to all full-time employees and part-time employees on a pro rata basis.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **UNIVERSITY OF NORTH CAROLINA SYSTEM - EPA SALARY INCREASES**

**Sec. 7.13.** The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the

Reserve for Salary Increases created in this act for fiscal year 1995-96 to provide an annual average salary increase of two percent (2%), including funds for the employer's retirement and social security contributions, commencing July 1, 1995, for all employees of The University of North Carolina, as well as employees other than teachers of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). These funds shall be allocated to individuals according to the rules adopted by the Board of Governors, or the Board of Trustees of the North Carolina School of Science and Mathematics, as appropriate, and may not be used for any purpose other than for salary increases and necessary employer contributions provided by this section.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Creech, Esposito

#### **MOST STATE EMPLOYEES/SALARY INCREASES/1995-96**

**Sec. 7.14.** (a) The salaries in effect June 30, 1995, of all permanent full-time State employees whose salaries are set in accordance with the State Personnel Act, and who are paid from the General Fund or the Highway Fund shall be increased, on or after July 1, 1995, unless otherwise provided by this act, by two percent (2%).

(b) Except as otherwise provided in this act, salaries in effect June 30, 1995, for permanent full-time State officials and persons in exempt positions that are recommended by the Governor or the Governor and the Advisory Budget Commission and set by the General Assembly shall be increased by two percent (2%), commencing July 1, 1995.

(c) The salaries in effect June 30, 1995, for all permanent part-time State employees shall be increased on and after July 1, 1995, by pro rata amounts of the salary increases provided for permanent full-time employees covered under subsection (a) of this section.

(d) The Director of the Budget may allocate out of special operating funds or from other sources of the employing agency, except tax revenues, sufficient funds to allow a salary increase on and after July 1, 1995, in accordance with subsections (a), (b), or (c) of this section, including funds for the employer's retirement and social security contributions, of the permanent full-time and part-time employees of the agency.

(e) Within regular Executive Budget Act procedures as limited by this act, all State agencies and departments may increase on an equitable basis the rate of pay of temporary and permanent hourly State employees, subject to availability of funds in the particular agency or department, by pro rata amounts salary increase provided for permanent full-time employees covered by the provisions of subsection (a) of this section, commencing July 1, 1995.

(f) No person may receive a salary increase under G.S. 126-7 during the 1995-96 fiscal year, and no State employee or officer shall receive a merit increment during the 1995-96 and 1996-97 fiscal years except as otherwise provided by this act.



Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Creech, Esposito

### **ALL STATE-SUPPORTED PERSONNEL/SALARY INCREASES**

**Sec. 7.15.** (a) Salaries and related benefits for positions that are funded partially from the General Fund or Highway Fund and partially from sources other than the General Fund or Highway Fund shall be increased from the General Fund or Highway Fund appropriation only to the extent of the proportionate part of the salaries paid from the General Fund or Highway Fund.

(b) The granting of the salary increases under this act does not affect the status of eligibility for salary increments for which employees may be eligible unless otherwise required by this act.

(c) The salary increases provided in this Part are to be effective July 1, 1995, do not apply to persons separated from State service due to resignation, dismissal, reduction in force, death, or retirement, whose last workday is prior to July 1, 1995, or to employees involved in final written disciplinary procedures. The employee shall receive the increase on a current basis when the final written disciplinary procedure is resolved.

Payroll checks issued to employees after July 1, 1995, which represent payment of services provided prior to July 1, 1995, shall not be eligible for salary increases provided for in this act. This subsection shall apply to all employees, subject to or exempt from the State Personnel Act, paid from State funds, including public schools, community colleges, and The University of North Carolina.

(d) The Director of the Budget shall transfer from the Reserve for Salary Increases in this act for fiscal year 1995-96 all funds necessary for the salary increases provided by this act, including funds for the employer's retirement and social security contributions.

(e) The Director of the Budget shall allocate funds from the Reserve for Salary Adjustments provided in Section 2 of Chapter 324 of the 1995 Session Laws to the Department of Environment, Health, and Natural Resources to implement, effective July 1, 1995, the salary range revision approved for dental hygienists in October 1993. This revision is in addition to any other salary increment provided for those dental hygienists in this act.

(f) Nothing in this act authorizes the transfer of funds between the General Fund and the Highway Fund for salary increases.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Creech, Esposito

### **LAW ENFORCEMENT SALARIES EQUALIZED**

**Sec. 7.15A.** The Office of State Personnel shall adjust the salaries of law enforcement positions in Marine Fisheries and Wildlife Resources so that the average salaries of these employees are the same as the average salaries of members of the Highway Patrol in the same salary grade. Within each salary grade, each position shall receive the same percentage increase, except that no salary shall be increased above the top of the range.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Creech, Esposito

**TEMPORARY SALES TAX TRANSFER FOR WILDLIFE RESOURCES COMMISSION SALARY INCREASES**

**Sec. 7.15B.** For the 1995-96 and 1996-97 fiscal years, the Secretary of Revenue shall transfer at the end of each quarter from the State sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes to the State Treasurer for the Wildlife Resources Fund the cost of any legislative salary increase for employees of the Wildlife Resources Commission.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

**CERTAIN PUBLIC SCHOOL EMPLOYEES' SALARY INCREASE**

**Sec. 7.16.** (a) Superintendents, Assistant Superintendents, Associate Superintendents, Supervisors, Directors/Coordinators, and Finance Officers. -- The Director of the Budget may transfer from the Reserve for Salary Increases created in this act for fiscal year 1995-96 funds necessary to provide a salary increase of two percent (2%), including funds for the employer's retirement and social security contributions, commencing July 1, 1995, for all superintendents, assistant superintendents, associate superintendents, supervisors, directors, coordinators, evaluators, and program administrators whose salaries are supported from the State's General Fund. These funds may not be used for any purpose other than for the salary increase and necessary employer contributions provided by this subsection.

(b) Noncertified Employees. -- The Director of the Budget may transfer from the Reserve for Salary Increases created in this act for fiscal year 1995-96 funds necessary to provide a salary increase of two percent (2%), including funds for the employer's retirement and social security contributions, commencing July 1, 1995, for all noncertified public school employees, except school bus drivers, whose salaries are supported from the State's General Fund. These funds may not be used for any purpose other than for the salary increases and necessary employer contributions provided by this subsection.

(c) The fiscal year 1994-95 pay rates adopted by local boards of education for school bus drivers shall be increased by at least two percent (2%) on and after July 1, 1995, to the extent that such rates of pay are supported by the allocation of State funds from the State Board of Education. Local boards of education shall increase the rates of pay for all school bus drivers who were employed during fiscal year 1994-95 and who continue their employment for fiscal year 1995-96 by at least two percent (2%) on and after July 1, 1995. The Director of the Budget may transfer from the salary increase reserve fund created in this act for fiscal year 1995-96 funds necessary to provide the salary increases for school bus drivers whose salaries are supported from the State's General Fund in accordance with the provisions of this subsection.

Requested by: Representatives Preston, Grady, Senators Plyler, Perdue, Odom

**SCHOOL CENTRAL OFFICE SALARIES**

**Sec. 7.17.** (a) The following monthly salary ranges apply to public school superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers for the 1995-96 fiscal year:

(1) School Administrator I:	\$2,697 - \$4,338
(2) School Administrator II:	\$2,862 - \$4,604
(3) School Administrator III:	\$3,037 - \$4,886
(4) School Administrator IV:	\$3,160 - \$5,084
(5) School Administrator V:	\$3,287 - \$5,290
(6) School Administrator VI:	\$3,488 - \$5,614
(7) School Administrator VII:	\$3,629 - \$5,841

The local board of education shall determine the appropriate category and placement for each assistant superintendent, associate superintendent, director/coordinator, supervisor, or finance officer, within the salary ranges and within funds appropriated by the General Assembly for central office administrators and superintendents. The category in which an employee is placed shall be included in the contract of any employee hired on or after July 1, 1995.

(b) The following monthly salary ranges apply to public school superintendents for the 1995-96 fiscal year:

(1) Superintendent I (Up to 2,500 ADM):	\$3,852 - \$6,199
(2) Superintendent II (2,501 - 5,000 ADM):	\$4,088 - \$6,578
(3) Superintendent III (5,001 - 10,000 ADM):	\$4,338 - \$6,981
(4) Superintendent IV (10,001 - 25,000 ADM):	\$4,604 - \$7,408
(5) Superintendent V (Over 25,000 ADM):	\$4,886 - \$7,861

The local board of education shall determine the appropriate category and placement for the superintendent based on the average daily membership of the local school administrative unit and within funds appropriated by the General Assembly for central office administrators and superintendents.

Notwithstanding the provisions of this subsection, a local board of education may pay an amount in excess of the applicable range to a superintendent who is entitled to receive the higher amount under Section 7.19(f) of this act.

(c) Longevity pay for superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers shall be as provided for State employees.

(d) Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for pursuant to this section. Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for under this section.

(e) The State Board shall not permit local school administrative units to transfer State funds from other funding categories for salaries for public school central office administrators.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Creech, Esposito

#### TEACHER SALARY SCHEDULES

**Sec. 7.18.** (a) The Director of the Budget may transfer from the Reserve for Salary Increases for the 1995-96 fiscal year funds necessary to implement the teacher salary schedule set out in subsection (b) of this section, including funds for the employer's retirement and social security contributions and funds for annual longevity payments at one percent (1%) of base salary for 10 to 14 years of State service, one and one-half percent (1.5%) of base salary for 15 to 19 years of State service, two percent (2%) of base salary for 20 to 24 years of State service, and two and one-half percent (2.5%) of base salary for 25 or more years of State service, commencing July 1, 1995, for all teachers whose salaries are supported from the State's General Fund. These funds shall be allocated to individuals according to rules adopted by the State Board of Education and the Superintendent of Public Instruction. The longevity payment shall be paid in a lump sum once a year.

(b)(1) Beginning July 1, 1995, the following monthly salary schedule shall apply to certified personnel of the public schools who are classified as "A" teachers. The schedule contains 30 steps with each step corresponding to one year of teaching experience.

<u>Years of Experience</u>	<u>1995-96 Salary</u>
00	\$2,062
01	2,103
02	2,145
03	2,231
04	2,276
05	2,322
06	2,368
07	2,415
08	2,463
09	2,512
10	2,562
11	2,613
12	2,665
13	2,718
14	2,772
15	2,827
16	2,884
17	2,942
18	3,001
19	3,061
20	3,122
21	3,184

22	3,248
23	3,313
24	3,379
25	3,447
26	3,516
27	3,586
28	3,658
29	3,731
30+	3,731

- (2) Beginning July 1, 1995, the following monthly salary schedule shall apply to certified personnel of the public schools who are classified as "G" teachers. The schedule contains 30 steps with each step corresponding to one year of teaching experience.

<u>Years of Experience</u>	<u>1995-96 Salary</u>
00	\$2,191
01	2,235
02	2,280
03	2,371
04	2,418
05	2,466
06	2,515
07	2,565
08	2,616
09	2,668
10	2,721
11	2,775
12	2,831
13	2,888
14	2,946
15	3,005
16	3,065
17	3,126
18	3,189
19	3,253
20	3,318
21	3,384
22	3,452
23	3,521
24	3,591
25	3,663
26	3,736
27	3,811
28	3,887
29	3,965
30+	3,965

- (3) Certified public school teachers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per



month in addition to the compensation provided for certified personnel of the public schools who are classified as "G" teachers. Certified public school teachers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "G" teachers.

(c) The first step of the salary schedule for school psychologists shall be equivalent to Step 5, corresponding to five years of experience, on the salary schedule established in this section for certified personnel of the public schools who are classified as "G" teachers. Certified psychologists shall be placed on the salary schedule at an appropriate step based on their years of experience. Certified psychologists shall receive longevity payments based on years of State service in the same manner as teachers.

Certified psychologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for certified psychologists. Certified psychologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for certified psychologists.

(d) Certified personnel of the public schools who are: (i) classified as "A" teachers; (ii) at the maximum of their pay range on June 30, 1995; and (iii) employed as teachers for the first three pay periods of the 1995-96 school year shall receive a one-time bonus of seven hundred forty-six dollars (\$746.00), payable at the third payroll period of the 1995-96 school year. Certified personnel of the public schools who are: (i) classified as "G" teachers; (ii) at the maximum of their pay range on June 30, 1995; and (iii) employed as teachers for the first three pay periods of the 1995-96 school year, shall receive a one-time bonus of seven hundred ninety-three dollars (\$793.00), payable at the third payroll period of the 1995-96 school year. Certified personnel of the public schools who are: (i) certified based on academic preparation at the six-year degree level; (ii) at the maximum of their pay range on June 30, 1995; and (iii) employed as teachers for the first three pay periods of the 1995-96 school year shall receive a one-time bonus of eight hundred eighteen dollars (\$818.00), payable at the third payroll period of the 1995-96 school year. Certified personnel of the public schools who are: (i) certified based on academic preparation at the doctoral degree level; (ii) at the maximum of their pay range on June 30, 1995; and (iii) employed as teachers for the first three pay periods of the 1995-96 school year shall receive a one-time bonus of eight hundred forty-four dollars (\$844.00), payable at the third payroll period of the 1995-96 school year.

(e) Certified personnel of the public schools who are: (i) classified as psychologists with advanced degrees; (ii) at the maximum of their pay range on June 30, 1995; and (iii) employed as school psychologists for the first three pay periods of the 1995-96 school year, shall receive a one-time bonus of nine hundred one dollars (\$901.00), payable at the third payroll period of the 1995-96 school year. Certified personnel of the public schools who are:

(i) classified as psychologists with doctoral degrees; (ii) at the maximum of their pay range on June 30, 1995; and (iii) employed as school psychologists for the first three pay periods of the 1995-96 school year, shall receive a one-time bonus of nine hundred twenty-six dollars (\$926.00), payable at the third payroll period of the 1995-96 school year.

Requested by: Representatives Holmes, Creech, Esposito, Grady, Preston, Senators Plyler, Perdue, Odom

### **SCHOOL-BASED ADMINISTRATOR SALARIES**

**Sec. 7.19.** (a) Funds appropriated to the Reserve for Salary Increases shall be used for the implementation of the salary schedule for school-based administrators as provided in this section. These funds shall be used for State-paid employees only.

(b) The salary schedule for school-based administrators shall apply only to principals and assistant principals. The salary schedule for the 1995-96 fiscal year is as follows:

Step	Asst. Prin.	Prin.I	Prin.II	Prin.III	Prin.IV	Prin.V	Prin.VI	Prin.VII
0	--	--	--	--	--	--	--	--
1	--	--	--	--	--	--	--	--
2	--	--	--	--	--	--	--	--
3	--	--	--	--	--	--	--	--
4	\$2,491	--	--	--	--	--	--	--
5	2,541	--	--	--	--	--	--	--
6	2,592	--	--	--	--	--	--	--
7	2,644	--	--	--	--	--	--	--
8	2,697	\$2,697	--	--	--	--	--	--
9	2,751	2,751	--	--	--	--	--	--
10	2,806	2,806	\$2,862	--	--	--	--	--
11	2,862	2,862	2,919	--	--	--	--	--
12	2,919	2,919	2,977	\$3,037	--	--	--	--
13	2,977	2,977	3,037	3,098	\$3,160	--	--	--
14	3,037	3,037	3,098	3,160	3,223	\$3,287	--	--
15	3,098	3,098	3,160	3,223	3,287	3,353	--	--
16	3,160	3,160	3,223	3,287	3,353	3,420	\$3,488	--
17	3,223	3,223	3,287	3,353	3,420	3,488	3,558	\$3,629
18	3,287	3,287	3,353	3,420	3,488	3,558	3,629	3,702
19	3,353	3,353	3,420	3,488	3,558	3,629	3,702	3,776
20	3,420	3,420	3,488	3,558	3,629	3,702	3,776	3,852
21	3,488	3,488	3,558	3,629	3,702	3,776	3,852	3,929
22	3,558	3,558	3,629	3,702	3,776	3,852	3,929	4,008
23	3,629	3,629	3,702	3,776	3,852	3,929	4,008	4,088
24	3,702	3,702	3,776	3,852	3,929	4,008	4,088	4,170
25	3,776	3,776	3,852	3,929	4,008	4,088	4,170	4,253

26	3,852	3,852	3,929	4,008	4,088	4,170	4,253	4,338
27	3,929	3,929	4,008	4,088	4,170	4,253	4,338	4,425
28	4,008	4,008	4,088	4,170	4,253	4,338	4,425	4,514
29	4,088	4,088	4,170	4,253	4,338	4,425	4,514	4,604
30	4,170	4,170	4,253	4,338	4,425	4,514	4,604	4,696
31	4,253	4,253	4,338	4,425	4,514	4,604	4,696	4,790
32	--	4,338	4,425	4,514	4,604	4,696	4,790	4,886
33	--	--	4,514	4,604	4,696	4,790	4,886	4,984
34	--	--	4,604	4,696	4,790	4,886	4,984	5,084
35	--	--	--	4,790	4,886	4,984	5,084	5,186
36	--	--	--	4,886	4,984	5,084	5,186	5,290
37	--	--	--	--	5,084	5,186	5,290	5,396
38	--	--	--	--	--	5,290	5,396	5,504
39	--	--	--	--	--	--	5,504	5,614
40	--	--	--	--	--	--	5,614	5,726
41	--	--	--	--	--	--	--	5,841.

(c) The appropriate classification for placement of principals and assistant principals on the salary schedule shall be determined in accordance with the following schedule:

Classification	Number of Teachers Supervised
Assistant Principal	
Principal I	Less than 11 Teachers
Principal II	11-21 Teachers
Principal III	22-32 Teachers
Principal IV	33-43 Teachers
Principal V	44-54 Teachers
Principal VI	55-65 Teachers
Principal VII	More than 65 Teachers

The number of teachers supervised includes teachers and assistant principals paid from State funds only; it does not include teachers or assistant principals paid from non-State funds or the principal or teacher assistants.

(d) A principal shall be placed on the step on the salary schedule that reflects total number of years of experience as a certificated employee of the public schools and an additional step for every three years of experience as a principal.

(e) Principals and assistant principals with certification based on academic preparation at the six-year degree level shall be paid a salary supplement of one hundred twenty-six dollars (\$126.00) per month and at the doctoral degree level shall be paid a salary supplement of two hundred fifty-three dollars (\$253.00) per month.

(f) There shall be no State requirement that superintendents in each local school unit shall receive in State-paid salary at least one percent (1%) more than the highest paid principal receives in State salary in that school unit: Provided, however, the additional State-paid salary a superintendent who was employed by a local school administrative unit for the 1992-93 fiscal year received because of that requirement shall not be reduced because of this subsection for subsequent fiscal years that the superintendent is

employed by that local school administrative unit so long as the superintendent is entitled to at least that amount of additional State-paid salary under the rules in effect for the 1992-93 fiscal year.

(g) Longevity pay for principals and assistant principals shall be as provided for State employees.

(h) (1) If a principal is reassigned to a higher job classification because the principal is transferred to a school within a local school administrative unit with a larger number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the higher job classification.

(2) If a principal is reassigned to a lower job classification because the principal is transferred to a school within a local school administrative unit with a smaller number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the lower job classification.

This subdivision applies to all transfers on or after the ratification date of this act, except transfers in school systems that have been created, or will be created, by merging two or more school systems. Transfers in these merged systems are exempt from the provisions of this subdivision for one calendar year following the date of the merger.

(i) Except as provided in subsection (h) of this section, the salary of a principal or assistant principal shall not be less for the 1995-96 fiscal year than it was for the 1993-94 fiscal year solely as a result of placement on the salary schedule established in this section.

(j) Certified personnel of the public schools who are school administrators and who are at the maximum of their pay range on June 30, 1995, shall receive a one-time bonus as set out in the table below payable at the third payroll period of the 1995-96 school year:

<u>Classification</u>	<u>Bonus Amount</u>
Asst. Principal	\$851
Asst. Principal Advanced	876
Asst. Principal Doctorate	901
Principal I	1,041
Principal I Advanced	1,071
Principal I Doctorate	1,102
Principal II	1,105
Principal II Advanced	1,135
Principal II Doctorate	1,166
Principal III	1,173
Principal III Advanced	1,203
Principal III Doctorate	1,233
Principal IV	1,220
Principal IV Advanced	1,250
Principal IV Doctorate	1,281
Principal V	1,270
Principal V Advanced	1,300

Principal V Doctorate	1,330
Principal VI	1,347
Principal VI Advanced	1,378
Principal VI Doctorate	1,408
Principal VII	1,402
Principal VII Advanced	1,432
Principal VII Doctorate	1,463.

Requested by: Representatives Holmes, Esposito, Creech, Cocklereece,  
Senators Plyler, Perdue, Odom

### STATE EMPLOYEE RIF RIGHTS/OPTIONS

**Sec. 7.20.** (a) G.S. 126-7.1 reads as rewritten:

"§ 126-7.1. *Posting requirement; State employees receive priority consideration; reduction-in-force rights.*

(a) All vacancies for which any State agency, department, or institution openly recruit shall be posted within at least the following:

- (1) The personnel office of the agency, department, or institution having the vacancy; and
- (2) The particular work unit of the agency, department, or institution having the vacancy

in a location readily accessible to employees. If the decision is made, initially or at any time while the vacancy remains open, to receive applicants from outside the recruiting agency, department, or institution, the vacancy shall be listed with the Office of State Personnel for the purpose of informing current State employees of such vacancy. The State agency, department, or institution may not receive approval from the Office of State Personnel to fill a job vacancy if the agency, department, or institution cannot prove to the satisfaction of the Office of State Personnel that it complied with these posting requirements. The agency, department, or institution which hires any person in violation of these posting requirements shall pay such person when employment is discontinued as a result of such violation for the work performed during the period of time between his initial employment and separation.

(a1) State employees to be affected by a reduction in force shall be notified of the reduction in force as soon as practicable, and in any event, no less than 30 days prior to the effective date of the reduction in force.

(a2) The State Personnel Commission shall adopt rules to provide that priority consideration for State employees separated from State employment as the result of reductions in force is to enable a State employee's return to career service at a salary grade and salary rate equal to that held in the most recent position. The State Personnel Commission shall provide that a State employee who:

- (1) Accepts a position at the same salary grade shall be paid at the same salary rate as the employee's previous position.
- (2) Accepts a position at a lower salary grade than the employee's previous position shall be paid at the same rate as the previous position unless the salary rate exceeds the maximum of the new salary grade. When the salary rate exceeds the maximum of the



salary grade, the employee's new salary rate shall be reduced to the maximum of the new salary grade.

(b) Subsection (a) of this section does not apply to vacancies which must be filled immediately to prevent work stoppage or the protection of the public health, safety, or security.

(c) If a State employee subject to this section:

- (1) Applies for another position of State employment that would constitute a promotion and;
- (2) Has substantially equal qualifications as an applicant who is not a State employee

then the State employee shall receive priority consideration over the applicant who is not a State employee. This priority consideration shall not apply when the only applicants considered for the vacancy are current State employees.

(c1) If a State employee who has been separated due to reduction in force or who has been given notice of imminent separation due to reduction in force:

- (1) Applies for another position of State employment equal to or lower in salary grade than the position held by the employee at the time of notification or separation; and
- (2) Is determined qualified for that position

~~then within the separating agency, all State agencies, the State employee shall receive priority consideration over all other applicants including those who are current State employees not affected by the reduction in force. Within all other agencies, the State employee shall receive priority consideration over other applicants from outside State government, but shall receive equal consideration with other applicants who are current State employees not affected by the reduction in force. This priority shall remain in effect for a period of 12 months from the date the employee receives notification of separation by reduction in force. State employees separated due to reduction in force shall receive higher priority than other applicants with employment or reemployment priorities, except that the reemployment priority created by G.S. 126-5(e)(1) shall be considered as equal. The reduction in force reduction-in-force priority created by this subsection shall be administered in accordance with rules promulgated by the State Personnel Commission.~~

(c2) If the applicants for reemployment for a position include current State employees, a State employee with more than 10 years of service shall receive priority consideration over a State employee having less than 10 years of service in the same or related position classification. This reemployment priority shall be given by all State departments, agencies, and institutions with regard to positions subject to this Chapter.

(d) 'Qualifications' within the meaning of subsection (c) of this section shall consist of:

- (1) Training or education;
- (2) Years of experience; and
- (3) Other skills, knowledge, and abilities that bear a reasonable functional relationship to the abilities and skills required in the job vacancy applied for."

- (b) This section becomes effective July 1, 1995.

Requested by: Representatives Sherrill, Pate, Thompson, Senators Plyler, Perdue, Odom

#### **ADDITIONAL STATE EMPLOYEE RIF RIGHTS/OPTIONS**

**Sec. 7.21.** (a) G.S. 135-40.2(a) is amended by adding a new subdivision to read:

"(6) Notwithstanding the provisions of G.S. 135-40.11, employees formerly covered by the provisions of this section, other than retired employees, who have been employed for 12 or more months by an employing unit and whose jobs are eliminated because of a reduction, in total or in part, in the funds used to support the job or its responsibilities, provided the employees were covered by the Plan at the time of separation from service resulting from a job elimination. Employees covered by this subsection shall be covered for a period of up to 12 months following a separation from service because of a job elimination."

(b) G.S. 135-40.2(b)(5) reads as rewritten:

"(5) The spouses and eligible dependent children of enrolled employees, retirees, former employees covered by the provisions of G.S. 135-40.2(a)(6), and members of the General Assembly."

(c) G.S. 135-40.2(b) is amended by adding a new subdivision to read:

"(12) Notwithstanding the provisions of G.S. 135-40.11, former employees covered by the provisions of G.S. 135-40.2(a)(6), and their spouses and eligible dependent children who were covered by the Plan at the time of the former employees' separation from service pursuant to G.S. 135-40.2(a)(6), following expiration of the former employees' coverage provided by G.S. 135-40.2(a)(6)."

(d) This section becomes effective June 30, 1995.

Requested by: Senators Martin of Pitt, Warren, Kerr, Gulley, Representatives Ives, Lemmond, Culpepper

#### **ASSIST VOLUNTEER SAFETY WORKERS**

**Sec. 7.21A.** (a) Article 87 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-87-10. Workers' Compensation Fund for the benefit of volunteer safety workers.

(a) Definition. -- As used in this section, the term 'eligible unit' means a volunteer fire department or volunteer rescue/EMS unit that is not part of a unit of local government and is exempt from State income tax under G.S. 105-130.11.

(b) Creation. -- The Workers' Compensation Fund is created in the Department of Insurance as an expendable trust fund. Accordingly, interest and other investment income earned by the Fund accrues to it, and revenue in the Fund at the end of a fiscal year remains in the Fund and does not revert.

(c) Use. -- Revenue in the Workers' Compensation Fund shall be used to provide workers' compensation benefits to members of eligible units.

Chapter 97 of the General Statutes governs the payment of benefits from the Fund. Benefits are payable for compensable injuries or deaths that occur on or after July 1, 1996.

(d) Administration. -- The State Fire and Rescue Commission, established under G.S. 58-78-1, shall administer the Workers' Compensation Fund and shall perform this duty by contracting with a third-party administrator. The contracting procedure is not subject to Article 3C of Chapter 143 of the General Statutes. The reasonable and necessary expenses incurred by the Commission in administering the Fund shall be paid out of the Fund by the State Treasurer. The Commission may adopt rules to implement this section.

(e) Revenue Source. -- Revenue is credited to the Workers' Compensation Fund from appropriations made to the Department of Insurance for this purpose. In addition, every eligible unit that elects to participate shall pay into the Fund an amount set annually by the State Fire and Rescue Commission to ensure that the Fund will be able to meet its payment obligations under this section. The amount shall be set as a per-capita fixed dollar amount for each member of the roster of the eligible unit.

The payment shall be made to the State Fire and Rescue Commission on or before July 1 of each year. The Commission shall remit the payments it receives to the State Treasurer, who shall credit the payments to the Fund. If the Commission does not receive an annual payment from an eligible unit by July 1, then that unit shall not receive workers' compensation coverage from the Fund for the fiscal year that begins that July 1."

(b) The first per member payment that eligible fire departments and rescue/EMS units must make to the State Fire and Rescue Commission under G.S. 58-87-10 is payable on or before July 1, 1996.

(c) G.S. 58-78-5(a) is amended by adding a new subdivision to read:

"(16) To provide workers' compensation benefits under G.S. 58-87-10, to create a Volunteer Safety Workers' Compensation Board to assist it in performing this duty, and to reimburse the members of the Commission's Volunteer Safety Workers' Compensation Board in accordance with G.S. 138-5 for travel and subsistence expenses incurred by them."

(d) G.S. 58-86-35 reads as rewritten:

"§ 58-86-35. Firemen's application for membership in fund; monthly payments by members; payments credited to separate accounts of members.

Those firemen who are eligible pursuant to G.S. 58-86-25 may make application for membership to the board. Each fireman upon becoming a member of the fund shall pay the director of the fund the sum of ~~five~~ ten dollars (~~\$5.00~~) (\$10.00) per month. The monthly payments shall be credited to the separate account of the member and shall be kept by the custodian so it is available for payment on withdrawal from membership or retirement."

(e) G.S. 58-86-40 reads as rewritten:

"§ 58-86-40. Rescue squad worker's application for membership in funds; monthly payments by members; payments credited to separate accounts of members.

Those rescue squad workers eligible pursuant to G.S. 58-86-30 may ~~make application apply~~ to the board for membership. ~~All persons who~~

~~subsequently become rescue squad workers may make application for membership. Each eligible rescue squad worker upon becoming a member shall pay the director of the fund the sum of five ten dollars (\$5.00) (\$10.00) per month. A rescue squad worker who, on the date of the establishment of the fund, has service as a rescue squad worker certified by the Department of State Treasurer, may make a lump sum payment of five dollars (\$5.00) per month for each month of service as an eligible rescue squad worker as defined by G.S. 58-86-30, on or before December 31, 1983, for as many as 240 months together with interest at an annual rate of six percent (6%). The~~

The monthly payments shall be credited to the separate account of the member and shall be kept by the custodian so it is available for payment on withdrawal from membership or retirement."

(f) G.S. 58-86-45(b) reads as rewritten:

"(b) ~~Effective April 1, 1987, any~~ An eligible fireman or rescue squad worker who ~~has not reached his thirty-fifth birthday who is eligible and who is not yet 35 years old and has not previously elected to become a member may make application through apply~~ to the board of trustees for membership in the fund at any time. ~~The person shall~~ Upon becoming a member, the worker must make a lump sum payment of ~~five ten dollars (\$5.00) (\$10.00)~~ per month retroactively to the time ~~he~~ the worker first became eligible to become a member, plus interest at an annual rate to be set by the board of trustees, for each year of his retroactive payments. Upon making this lump sum payment, the ~~person~~ worker shall be given credit for all prior service in the same manner as if ~~he~~ the worker had ~~made application applied~~ for membership ~~at the time he first became~~ upon first becoming eligible. Any

A member who ~~has not reached his thirty-fifth birthday is not yet 35 years old, who made application applied~~ for membership ~~subsequent to the time he was first eligible~~ after first becoming eligible, and who did not receive credit for prior service may receive credit for ~~such~~ the prior service upon making a lump sum payment of ~~five ten dollars (\$5.00) (\$10.00)~~ per for each month since the worker first became eligible, ~~retroactively to the time he first became eligible,~~ plus interest at an annual rate to be set by the board of trustees, for each year of his retroactive payments. Upon making this lump sum payment, the date of membership shall be the same as if ~~he~~ the worker had ~~made application applied~~ for membership ~~at the time he was first~~ upon first becoming eligible."

(g) G.S. 58-86-55 reads as rewritten:

"§ 58-86-55. *Monthly pensions upon retirement.*

Any member who has served 20 years as an 'eligible fireman' or 'eligible rescue squad worker' in the State of North Carolina, as provided in G.S. 58-86-25 and G.S. 58-86-30, and who has attained the age of 55 years is entitled to be paid a monthly pension from this fund. The monthly pension shall be in the amount of one hundred ~~ten~~ thirty-five dollars ~~(\$110.00) (\$135.00)~~ per month. Any retired fireman receiving a pension of one hundred ten dollars (\$110.00) per month shall, effective July 1, 1994, 1995, receive a pension of one hundred ~~ten~~ thirty-five dollars ~~(\$110.00) (\$135.00)~~ per month.



Members shall pay ~~five~~ ten dollars ~~(\$5.00)~~ (\$10.00) per month as required by G.S. 58-86-35 and G.S. 58-86-40 for a period of no longer than 20 years. No 'eligible rescue squad member' shall receive a pension prior to July 1, 1983. No ~~person~~ member shall be entitled to a pension hereunder until ~~his~~ the member's official duties as a fireman or rescue squad worker for which ~~he~~ the member is paid compensation shall have been terminated and ~~he~~ the member shall have retired as such according to standards or rules fixed by the board of trustees.

~~Any~~ A member who is totally and permanently disabled while in the discharge of ~~his~~ the member's official duties as a result of bodily injuries sustained or as a result of extreme exercise or extreme activity experienced in the course and scope of ~~his~~ those official duties and who leaves the fire or rescue squad service because of this disability shall be entitled to be paid from the fund a monthly benefit in an amount of one hundred ~~ten~~ thirty-five dollars ~~(\$110.00)~~ (\$135.00) per month beginning the first month after ~~his~~ the member's fifty-fifth birthday. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of ~~his~~ the application, and annually thereafter. Any disabled member shall not be required to make the monthly payment of ~~five~~ ten dollars ~~(\$5.00)~~ (\$10.00) as required by G.S. 58-86-35 and G.S. 58-86-40.

~~Any~~ A member who is totally and permanently disabled for any cause, other than line of duty, who leaves the fire or rescue squad service because of this disability and who has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of ~~five~~ ten dollars ~~(\$5.00)~~ (\$10.00) to the fund until ~~he~~ the member has paid into the fund the sum of one thousand two hundred dollars ~~(\$1,200)~~, made contributions for a total of 240 months. The member shall upon attaining the age of 55 years be entitled to receive a pension as provided by this section. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of ~~his~~ the application and annually thereafter.

~~Any~~ A member who, because his residence is annexed by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, or whose department is closed because of an annexation by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, and because of such annexation is unable to perform as a fireman of any status, and if the member has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of ~~five~~ ten dollars ~~(\$5.00)~~ (\$10.00) to the fund until ~~he~~ the member has paid into the fund the sum of one thousand two hundred dollars ~~(\$1,200)~~, made contributions for a total of 240 months. The member upon attaining the age of 55 years and completion of such contributions shall be entitled to receive a pension as provided by this section. Any application to make monthly contributions under this section shall be subject to a finding of eligibility by the Board of Trustees upon application of the member.

The pensions provided shall be in addition to all other pensions or benefits under any other statutes of the State of North Carolina or the United



States, notwithstanding any exclusionary provisions of other pensions or retirement systems provided by law."

(h) G.S. 58-86-30 reads as rewritten:

"§ 58-86-30. *'Eligible rescue squad worker' defined: determination and certification of eligibility.*

'Eligible rescue squad worker' means ~~any~~ a person who is a member of a rescue or emergency medical services squad who that is eligible for membership in the North Carolina Association of Rescue and Emergency Medical Services, Squads, Inc., and who has attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue or emergency medical services squad worker eligible for membership in the North Carolina Association of Rescue and Emergency Medical Services, Squads, Inc., must file a roster certified by the secretary of the association of those rescue or emergency medical services squad workers meeting the association requirements of this section with the State Treasurer by January 1 of each calendar year.

'Eligible rescue squad worker' does not mean 'eligible fireman' as defined by G.S. 58-86-25, nor may an 'eligible rescue squad worker' qualify also as an 'eligible fireman' in order to receive double benefits available under this Article."

(i) The changes made to G.S. 58-86-45 and G.S. 58-86-55 by this Part do not affect the credit received for service performed before July 1, 1995. The increase in monthly pension contributions from five dollars (\$5.00) to ten dollars (\$10.00) in G.S. 58-86-55 does not affect the amount of monthly contributions made prior to July 1, 1995.

(j) The caption for Article 87 of Chapter 58 of the General Statutes reads as rewritten:

#### "ARTICLE 87.

"Volunteer Fire Department and Rescue/EMS Funds, Safety Workers Assistance."

(k) G.S. 58-87-1(b) reads as rewritten:

"(b) A fire department is eligible for a grant under this section ~~if~~ if it meets all of the following conditions:

- (1) It serves a response area of 6,000 or less in population;  
population.
- (2) It is all volunteer; and has no more than two paid members and otherwise consists of volunteer members.
- (3) It has been certified by the Department of Insurance.

In making the population determination under subdivision (1), the Department shall use the ~~latest decennial U.S. Census population data, most recent annual population estimates certified by the State Planning Officer."~~

(l) G.S. 58-87-5(b) reads as rewritten:

"(b) A rescue or rescue/EMS unit is eligible for a grant under this section ~~if~~ if it meets all of the following conditions:

- (1) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1066, s. 33(a), effective July 15, 1990.
- (2) It is all volunteer, except that the rescue or rescue/EMS unit may have paid members, not to exceed two positions, either full-time or

part-time; and has no more than two paid members and otherwise consists of volunteer members.

- (3) It has been recognized by the Department as an organization that provides rescue or rescue and emergency medical ~~services; and services.~~
- (4) It satisfies the eligibility criteria established by the Department under subsection (a) of this section."

(m) The Legislative Research Commission shall study the issue of assistance to volunteer fire, rescue, and emergency medical service units to determine the types and amounts of assistance that are appropriate for the State and other levels of government. In conducting the study, the Commission may consider the funding sources for and uses of funds in the Firemen's Relief Fund established in Article 84 of Chapter 58 of the General Statutes, the North Carolina Firemen's and Rescue Squad Workers' Pension Fund established in Article 86 of Chapter 58 of the General Statutes, the Volunteer Fire Department Fund, the Volunteer Rescue/EMS Fund, and the Workers' Compensation Fund established in Article 87 of Chapter 58 of the General Statutes, and the Rescue Squad Workers' Relief Fund established in Article 88 of Chapter 58 of the General Statutes. The Commission shall make a final report to the 1996 Regular Session of the 1995 General Assembly.

(n) Subsections (d) through (i) of this section are effective July 1, 1995. The remainder of this section is effective upon ratification.

Requested by: Representatives Holmes, Creech, Esposito, McCombs, Senators Plyler, Perdue, Odom

### **1995 RETIREMENT BENEFITS ACT**

**Sec. 7.22.** (a) G.S. 135-5 is amended by adding a new subsection to read:

"(zz) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995."

(b) G.S. 135-65 is amended by adding a new subsection to read:

"(p) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994. Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995."

(c) G.S. 120-4.22A is amended by adding a new subsection to read:

"(j) In accordance with subsection (a) of this section, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1995, shall be increased by two percent (2%) of the allowance payable on January 1, 1995. Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1995, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1995, and June 30, 1995."

(d) G.S. 128-24(5) reads as rewritten:

"(5) The provisions of this subdivision (5) shall apply to any member whose membership is terminated on or after July 1, 1965, and who becomes entitled to benefits hereunder in accordance with the provisions hereof.

a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967, the aforesated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforesated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or eligible former law enforcement officer.

b. In lieu of the benefits provided in paragraph a of this subdivision, any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time

thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

Age at Retirement	Percentage Reduction
59	7
58	14
57	20
56	25
55	30
54	35
53	39
52	43
51	46
50	50

- b1. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 50 years, for any reason other than death or disability as provided in this Article, after completing 15 or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System, may elect to retire on a deferred early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.
- b2. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 55 years, for any reason other than death or disability as provided in this Article, after completing five or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred service retirement allowance upon attaining the age of 55 years or at any time thereafter; provided, that the member may commence retirement only upon written

application to the Board of Trustees setting forth at what time, as of the first day of a calendar month not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred service retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.

- b3. Deferred retirement allowance of members retiring on or after July 1, 1995. -- In lieu of the benefits provided in paragraphs a. and b. of this subdivision, any member who separates from service prior to attainment of age 60 years, after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on a deferred retirement allowance upon attaining the age of 50 years or any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to a member who is not a law enforcement officer or an eligible former law enforcement officer.
- c. Should a beneficiary who retired on an early or service retirement allowance be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part-time, temporary, interim, or on fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars (\$20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%).
- d. Should a beneficiary who retired on an early or service retirement allowance be restored to service as an employee, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a



member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restriction; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification.
2. For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification."

(e) G.S. 128-27 is amended by adding a new subsection to read:

(oo) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1994, shall be increased by two percent (2%) of the allowance payable on July 1, 1994, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1994, but before June 30, 1995, shall be increased by a prorated amount of two percent (2%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1994, and June 30, 1995."

(f) G.S. 128-27(m) reads as rewritten:

"(m) Survivor's Alternate Benefit. -- Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option two of subsection (g) above computed by assuming that the member had retired on

the first day of the month following the date of his death, provided that all three of the following conditions apply:

- (4) ~~The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance or had attained 20 years of creditable service.~~
- (1) a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance, or
- b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with G.S. 128-27(b15)(1)b. or G.S. 128-27(b15)(2)c., notwithstanding the requirement of obtaining age 50.
- (2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who is living at the time of his death.
- (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection apply.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (l) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase."

(g) This section becomes effective July 1, 1995.

Requested by: Representatives Barnes, Senators Plyler, Perdue, Odom  
**SALARY RELATED CONTRIBUTIONS/CONFORM UNC OPTIONAL PLAN**

**Sec. 7.22A.** Section 7.1(b) of Chapter 324 of the 1995 Session Laws reads as rewritten:

"(b) Effective July 1, 1995, the State's employer contribution rates budgeted for retirement and related benefits as a percentage of covered salaries for the 1995-96 fiscal year are (i) ten and eighty-three hundredths percent (10.83%) - Teachers and State Employees; (ii) fifteen and eighty-three hundredths percent (15.83%) - State Law Enforcement Officers; (iii) ~~nine and ten hundredths percent (9.10%)~~ nine and eighteen hundredths percent (9.18%) - University Employees' Optional Retirement Program; (iv) twenty-two and sixty-five hundredths percent (22.65%) - Consolidated Judicial Retirement System; and (v) twenty-three and twenty-seven hundredths percent (23.27%) - Legislative Retirement System. Each of the foregoing contribution rates includes two percent (2%) for hospital and medical benefits. The rate for State Law Enforcement Officers includes five percent (5%) for the Supplemental Retirement Income Plan. The rates for Teachers and State Employees, State Law Enforcement Officers, and for the

University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan."

Requested by: Representatives Pate, Russell, Sherrill, Easterling, Senators Plyler, Perdue, Odom

#### **FURTHER 1995 RETIREMENT BENEFITS**

**Sec. 7.23.** (a) G.S. 135-5(b15) reads as rewritten:

"(b15) Service Retirement Allowance of Members Retiring on or after July 1, 1994, 1994, but before July 1, 1995. -- Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1994, but before July 1, 1995, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of his creditable service.
  - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
    1. The service retirement allowance payable under G.S. 135-5(b15)(1)a. reduced by one-third of one percent (1/3 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
    2. The service retirement allowance as computed under G.S. 135-5(b15)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-three hundredths percent (1.73%) of his average final compensation, multiplied by the number of years of creditable service.

- b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b15)(2)a. but shall be reduced by one-quarter of one percent ( $1/4$  of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
- c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
  - 1. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. but reduced by the sum of five-twelfths of one percent ( $5/12$  of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ( $1/4$  of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
  - 2. The service retirement allowance as computed under G.S. 135-5(b15)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
  - 3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance provided by G.S. 135-5(b14)(2)c.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b)."

(b) G.S. 135-5 is amended by adding a new subsection to read:

"(b16) Service Retirement Allowance of Members Retiring on or After July 1, 1995. -- Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1995, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

- a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-five hundredths percent (1.75%) of his average final compensation, multiplied by the number of years of his creditable service.

- b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
  - 1. The service retirement allowance payable under G.S. 135-5(b16)(1)a. reduced by one-third of one percent (1/3 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
  - 2. The service retirement allowance as computed under G.S. 135-5(b16)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
  - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-five hundredths percent (1.75%) of his average final compensation, multiplied by the number of years of creditable service.
  - b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 135-5(b16)(2)a. but shall be reduced by one-quarter of one percent (1/4 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
  - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
    - 1. The service retirement allowance as computed under G.S. 135-5(b16)(2)a. but reduced by the sum of five-twelfths of one percent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (1/4 of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or



2. The service retirement allowance as computed under G.S. 135-5(b16)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or

3. If the member's creditable service commenced prior to July 1, 1994, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 135-5(b16)(2)b.

d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963, shall not receive less than the benefit provided by G.S. 135-5(b)."

(c) G.S. 128-27(b14) reads as rewritten:

"(b14) Service Retirement Allowance of Members Retiring on or after July 1, 1994, 1994, but before July 1, 1995. -- Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1994, but before July 1, 1995, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-one hundredths percent (1.71%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b), and (3)."

(d) G.S. 128-27 is amended by adding a new subsection to read:

"(b15) Service Retirement Allowance of Members Retiring on or After July 1, 1995. -- Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1995, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-two hundredths percent (1.72%) of his average final compensation, multiplied by the number of years of his creditable service.
  - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
    1. The service retirement allowance payable under G.S. 128-27(b15)(1)a. reduced by one-third of one percent (1/3 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
    2. The service retirement allowance as computed under G.S. 128-27(b15)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-two hundredths percent (1.72%) of his average final compensation, multiplied by the number of years of creditable service.
  - b. If the member's service retirement date occurs after his 60th and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b15)(2)a. but shall be reduced by one-quarter of one percent (1/4 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
  - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:

1. The service retirement allowance as computed under G.S. 128-27(b15)(2)a. but reduced by the sum of five-twelfths of one percent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (1/4 of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday;  
or
  2. The service retirement allowance as computed under G.S. 128-27(b15)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
  3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b15)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b)."

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Creech, Esposito

#### **ADDITIONAL RETIREMENT BENEFITS**

**Sec. 7.23A.** (a) G.S. 135-5(m) reads as rewritten:

"(m) Survivor's Alternate Benefit. -- Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option 2 of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that the following conditions apply:

- (1) a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance, or
- b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with ~~G.S. 135-5(b15)(1)b.~~ G.S. 135-5(b16)(1)b. or ~~G.S. 135-5(b15)(2)c.~~ G.S. 135-5(b16)(2)c., notwithstanding the requirement of obtaining age 50.
- (2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who was living at the time of his death.
- (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection to apply.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as

provided in subsection (l) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase. The term "in service" as used in this subsection includes a member in receipt of a benefit under the Disability Income Plan as provided in Article 6 of this Chapter."

(b) G.S. 135-5 is amended by adding a new subsection to read:

"(aaa) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1995. -- From and after July 1, 1995, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1995, shall be increased by one and two-tenths of one percent (1.2%) of the allowance payable on June 1, 1995. This allowance shall be calculated on the allowance payable and in effect on June 30, 1995, so as not to be compounded on any other increase granted by act of the 1995 General Assembly."

(c) G.S. 128-27 is amended by adding two new subsections to read:

"(pp) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1995. -- From and after July 1, 1995, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1995, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1995. This allowance shall be calculated on the allowance payable and in effect on June 30, 1995, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1995 General Assembly."

"(qq) From and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1993, shall be increased by seven-tenths of one percent (0.7%) of the allowance payable on July 1, 1993, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1995, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1993, but before June 30, 1994, shall be increased by a prorated amount of seven-tenths of one percent (0.7%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1993, and June 30, 1994."

Requested by: Senators Warren, Plyler, Perdue, Odom

# **RESTORE THE PROVISION FOR PURCHASE OF OUT-OF-STATE SERVICE IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM**

Sec. 7.23D. (a) G.S. 128-26 is amended by adding a new subsection to read:

"(j2) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service previously rendered to any state, territory, or other governmental subdivision of the United States other than this State by paying a total lump-sum payment determined as follows:

- (1) For members who completed 10 years of prior and current membership service, and retired members who completed 10 years of prior and current membership service prior to retirement, and whose current membership began on or before January 1, 1988, and who make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when he first entered current membership service, times the employee contribution rate at that time, times the months of service to be purchased, times two, with sufficient interest added thereto so as to equal the full cost of allowing such service, plus an administrative fee to be set by the Board of Trustees.
- (2) For members who complete five years of prior and current membership service, and retired members who complete five years of prior and current membership service prior to retirement, and eligible members and retired members covered by subdivision (1) of this subsection, whose current membership began on or before January 1, 1988, but who did not or do not make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term 'full liability' includes assumed postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance.

Creditable service under this subsection shall be allowed only at the rate of one year of out-of-state service for each two years of service in this State, with a maximum allowable of 10 years of out-of-state service. Such service is limited to full-time service which would be allowable under the laws governing this System. Credit will be allowed only if no benefit is allowable in another public retirement system as a result of the service."

(b) G.S. 135-4 is amended by adding a new subsection to read:

"(1) Notwithstanding any other provision of this Chapter, any member and any retired member as herein described may purchase creditable service previously rendered to any state, territory, or other governmental subdivision of the United States other than this State by paying a total lump-sum payment determined as follows:

- (1) For members who completed 10 years of membership service, and retired members who completed 10 years of membership service prior to retirement, whose current membership began on or before July 1, 1981, and who make such purchase within three years



after first becoming eligible, the cost shall be an amount equal to the monthly compensation the member earned when he first entered current membership service, times the employee contribution rate at that time, times the months of service to be purchased, times two, with sufficient interest added thereto so as to equal the full cost of allowing such service, plus an administrative fee to be set by the Board of Trustees.

- (2) For members who complete five years of membership service, and retired members who complete five years of membership service prior to retirement, and eligible members and retired members covered by subdivision (1) of this subsection, whose current membership began on or before July 1, 1981, but who did not or do not make such purchase within three years after first becoming eligible, the cost shall be an amount equal to the full liability of the service credits calculated on the basis of the assumptions used for the purposes of the actuarial valuation of the System's liabilities and shall take into account the retirement allowance arising on account of the additional service credits commencing at the earliest age at which the member could retire on an unreduced allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the foregoing provisions of this subsection that provide for the purchase of service credits, the term 'full liability' includes assumed postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service retirement allowance.

Creditable service under this subsection shall be allowed only at the rate of one year of out-of-state service for each two years of current membership service in this State, with a maximum allowable of 10 years of out-of-state service. Such service is limited to full-time service which would be allowable under the laws governing this System. Credit will be allowed only if no benefit is allowable in another public retirement system as a result of the service."

Requested by: Representatives Creech, Holmes, Esposito, Senators Plyler, Perdue, Odom

#### **STATE EMPLOYEE HEALTH BENEFIT PLAN/INCREASED WELLNESS BENEFITS**

**Sec. 7.24.** (a) G.S. 135-40.5 is amended by adding two new subsections to read:

"(e) Routine Diagnostic Examinations. -- The Plan will pay one hundred percent (100%) of allowable charges for routine diagnostic examinations and tests, including Pap smears, breast, colon, rectal, and prostate exams, X rays, mammograms, blood and blood pressure checks, urine tests, tuberculosis tests, and general health checkups that are medically necessary for the maintenance and improvement of individual health but no more often than once every three years for covered individuals to age 40 years, once every two years for covered individuals to age 50 years, and once a year for

covered individuals age 50 years and older, unless a more frequent occurrence is warranted by a medical condition when such charges are incurred in a medically supervised facility. Provided, however, that charges for such examinations and tests are not covered by the Plan when they are incurred to obtain or continue employment, to secure insurance coverage, to comply with legal proceedings, to attend schools or camps, to meet travel requirements, to participate in athletic and related activities, or to comply with governmental licensing requirements. The maximum amount payable under this subsection for a covered individual is one hundred fifty dollars (\$150.00) per fiscal year.

(f) Immunizations. -- The Plan will pay one hundred percent (100%) of allowable charges for immunizations for the prevention of contagious diseases as generally accepted medical practices would dictate when directed by an attending physician."

(b) G.S. 135-40.6(8)s. reads as rewritten:

"s. Routine Diagnostic Examinations: --Allowable charges for routine diagnostic examinations and tests, including Pap smears, breast, colon, rectal, and prostate exams, X rays, mammograms, blood and blood pressure checks, urine tests, tuberculosis tests, and general health checkups that are medically necessary for the maintenance and improvement of individual health but no more often than once every three years for covered individuals to age 40 years, once every two years for covered individuals to age ~~55~~ 50 years, and once a year for covered individuals age ~~55~~ 50 years and older, unless a more frequent occurrence is warranted by a medical condition when such charges are incurred in a medically supervised facility. Provided, however, that charges for such examinations and tests are not covered by the Plan when they are incurred to obtain or continue employment, to secure insurance coverage, to comply with legal proceedings, to attend schools or camps, to meet travel requirements, to participate in athletic and related activities or to comply with governmental licensing requirements. ~~The maximum amount payable under this subdivision is one hundred fifty dollars (\$150.00) per fiscal year."~~

(c) G.S. 135-40.6(8)t. is repealed.

Requested by: Representatives Crecch, Holmes, Esposito, Senators Plyler, Perdue, Odom

#### **STATE EMPLOYEE HEALTH BENEFIT PLAN/INCREASED LIFETIME BENEFIT**

**Sec. 7.25.** Effective January 1, 1994, G.S. 135-40.9 reads as rewritten:

"§ 135-40.9. *Maximum benefits.*

The maximum lifetime benefit for each covered individual will be ~~one million dollars (\$1,000,000),~~ two million dollars (\$2,000,000)."

Requested by: Representatives Creech, Holmes, Esposito, Senators Plyler, Perdue, Odom

# **STATE EMPLOYEE HEALTH BENEFIT PLAN/ORAL SURGERY BENEFITS**

**Sec. 7.26.** G.S. 135-40.6(8)f. reads as rewritten:

- "f. Dental Services: Oral surgery, including extraction of teeth, necessitated because of medical treatment. Dental surgery and appliances for mouth, jaw, and tooth restoration necessitated because of external violent and accidental means, such as the impact of moving body, vehicle collision, or fall occurring while an individual is covered under G.S. 135-40.3. No benefits are provided in connection with injury incurred in the act of chewing, nor for damage or breakage of an appliance such as bridge or denture being cleaned or otherwise not in normal mouth usage at the time of accident, nor for appliances for orthodontic treatment when a class of malocclusion, other than orthognathic, or cross bite has been diagnosed. Benefits for temporomandibular joint (TMJ) dysfunction appliance therapy are limited to cases where the TMJ dysfunction has been diagnosed as solely resulting from accidental means as certified by the attending practitioner and approved by the Claims Processor. Benefits shall include extractions, fillings, crowns, bridges, or other necessary therapeutic and restorative techniques and appliances to reasonably restore condition and function to that existing immediately prior to the accident. Injury or breakage of existing appliances such as bridges and dentures is limited to repair of such appliances unless certified as damaged beyond repair."

Requested by: Representatives Creech, Holmes, Esposito, Senators Plyler, Perdue, Odom

# **STATE EMPLOYEE HEALTH BENEFIT PLAN/WAIVER OF INPATIENT HOSPITAL CERTIFICATION PENALTY**

**Sec. 7.27.** G.S. 135-40.6(2)f. reads as rewritten:

- "f. Prior to admission for scheduled inpatient hospitalization, the admitting physician shall contact the Plan and secure approval certification for an inpatient admission, including a length of stay, based upon clinical criteria established by the medical community, before any in-hospital benefits are allowed under G.S. 135-40.8(a). Immediately following an emergency or unscheduled inpatient hospitalization, the admitting physician shall contact the Plan and secure approval certification for the admission's length of stay before any in-hospital benefits are allowed under G.S. 135-40.8(a). Effective January 1, 1987, failure to secure certification, or denial of certification, shall result in in-hospital benefits being allowed at the rate maximum amount of out-of-pocket expenses established by G.S. 135-40.8(b). Denial of certification by the Plan shall be

made only after contact with the admitting physician and shall be subject to appeal to the Executive Administrator and Board of Trustees. Inpatient hospital admission and length of stay certifications required by this subdivision do not apply to inpatient admissions outside of the United States. While approval certification for inpatient admissions is required to be initiated by the admitting physician, the employee or individual covered by the Plan shall be responsible for insuring that the required certification is secured. Failure to secure certification for inpatient hospitalization shall not result in a penalty to the employee or individual when approval would have been given if requested."

Requested by: Representatives Creech, Holmes, Esposito, Senators Plyler, Perdue, Odom

#### **STATE EMPLOYEE HEALTH BENEFIT PLAN/RETIREE PREMIUMS BASED ON RETIREMENT SERVICE CREDIT**

**Sec. 7.28.** (a) G.S. 135-40.2(a)(2) reads as rewritten:

"(2) Retired teachers, State employees, members of the General Assembly, and retired State law enforcement officers who retired under the Law Enforcement Officers' Retirement System prior to January 1, 1985. For employees first hired on and after October 1, 1995, and members of the General Assembly first taking office on and after October 1, 1995, future coverage as retired employees and retired members of the General Assembly is subject to a requirement that the future retiree have 20 or more years of retirement service credit in order to be covered by the provisions of this subdivision."

(b) G.S. 135-40.2 is amended by adding a new subsection to read:

"(a1) The following persons shall be eligible for coverage under the Plan, on a partially contributory basis, subject to the provisions of G.S. 135-40.3:

(1) Retired teachers, State employees, and members of the General Assembly with 10 but less than 20 years of retirement service credit, provided they were first hired or took office on or after October 1, 1995. For such future retirees, the State shall pay fifty percent (50%) of the Plan's total noncontributory premiums. Individual retirees shall pay the balance of the total noncontributory premiums not paid by the State."

(c) G.S. 135-40.2(b) is amended by adding a new subdivision to read:

"(11) Retired teachers, State employees, and members of the General Assembly with less than 10 years of retirement service credit, provided they were first hired or took office on or after October 1, 1995."

Requested by: Senators Plyler, Perdue, Odom

#### **STATE EMPLOYEE HEALTH BENEFIT PLAN/INCREASED CHIROPRACTIC BENEFITS**

**Sec. 7.28B.** G.S. 135-40.6(8)n. reads as rewritten:

- "n. Chiropractic Services: Limited to the alignment of the spine and releasing of pressure by manipulation in accordance with the definitions in G.S. 90-143. Maximum benefits for x-rays, manipulations, and modalities shall be ~~one thousand dollars (\$1,000)~~ two thousand dollars (\$2,000) per fiscal year."

Requested by: Senators Plyler, Perdue, Odom. Representatives Holmes, Creech, Esposito

#### **LRC STUDY CIVILIANIZATION**

**Sec. 7.29.** Section 8.3 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 8.3. The Legislative Research Commission may study issues related to civilianizing certain State government law enforcement functions and positions, including the appropriate use of nonsworn, noncertified personnel in positions for which sworn status is not cost-effective or required. This study shall include the recommendations made by the Government Performance Audit Committee on civilianization to the 1993 General Assembly.

The Legislative Research Commission may study what positions should be included in the salary continuation provisions of G.S. 143-166.13(a).

The Legislative Research Commission may make an interim report, including any legislative recommendations, to the 1995 General Assembly, Regular Session 1996, and shall make a final report, including any legislative recommendations, to the 1997 General Assembly."

#### **PART 8. GENERAL ASSEMBLY**

Requested by: Representatives Gardner, Hayes, Nye. Senators Martin of Guilford, Forrester

#### **BLUE RIBBON TASK FORCE ON THE MENTAL HEALTH SYSTEM**

**Sec. 8.1.** (a) If the Mental Health Study Commission is not reauthorized by the 1995 General Assembly, Regular Session 1995, there is established in the General Assembly a Blue Ribbon Task Force on the Mental Health System. This task force shall study systemwide issues affecting the development, administration, and delivery of mental health services, including issues relating to the governance, accountability, and quality of services delivered.

(b) This Blue Ribbon Task Force on the Mental Health System shall be composed of 11 members appointed as follows:

- (1) Four members of the House of Representatives at the time of their appointment, appointed by the Speaker of the House of Representatives;
- (2) Four members of the Senate at the time of their appointment, appointed by the President Pro Tempore of the Senate;
- (3) One member of Coalition 2001, appointed by the Governor;
- (4) One member of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, appointed by the Secretary of the Department of Human Resources; and



- (5) One member of the Department of Insurance, appointed by the Commissioner of Insurance.

The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each select a legislative member from their appointments to serve as cochair of the task force. Meetings shall be called at the will of the cochairs.

All members shall serve at the will of their appointing officer. Unless removed or unless resigning, members shall serve until the task force has made its report. Vacancies in membership shall be filled by the appropriate appointing officer.

(c) The Blue Ribbon Task Force on the Mental Health System may contract for consultant services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Administrative Officer shall assign professional and clerical staff to assist in the work of the task force. The professional staff shall include the appropriate staff from the Fiscal Research, Research, and Legislative Drafting Divisions of the Legislative Services Office of the General Assembly. Clerical staff shall be furnished to the task force through the offices of House of Representatives and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the task force. The task force may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The task force, while in the discharge of official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information and any data within their possession or ascertainable from their records, and the power to subpoena witnesses.

Members of the task force shall receive per diem, subsistence, and travel allowances as follows:

- (1) Task force members who are members of the General Assembly, at the rate established in G.S. 120-3.1;
- (2) Task force members who are officials or employees of the State or of local government agencies, at the rate established in G.S. 138-6; and
- (3) All other task force members, at the rate established in G.S. 138-5.

(d) The Blue Ribbon Task Force shall report the results of its study, together with any legislative proposals and cost analyses, to the 1995 General Assembly, Regular Session 1996, within a week of its convening.

Requested by: Representatives Ives, Lemmond, Senator Warren

#### **CONFIDENTIALITY OF DOCUMENTS USED TO PREPARE FISCAL NOTES**

**Sec. 8.2.** G.S. 120-131.1(a) as enacted by Section 8.1 of Chapter 324 of the 1995 Session laws reads as rewritten:

"(a) A request made to an employee of a State agency other than the General Assembly by an employee of the Fiscal Research Division for assistance in the preparation of a fiscal note is confidential. An employee of

a State agency other than the General Assembly who receives such a request or who learns of such a request made to another employee of his or her agency shall reveal the existence of the request only to other employees of the agency to the extent that it is necessary to respond to the request, and to the employee's supervisor and to the Office of State Budget and Management. All documents prepared by the employee in response to the request of the Fiscal Research Division are also confidential and shall be kept confidential in the same manner as the original ~~request~~. request, except that documents submitted to the Fiscal Research Division in response to the request cease to be confidential under this section when the Fiscal Research Division releases a fiscal note based on the documents."

Requested by: Representatives Ives, Lemmond, Culpepper, Senators Warren, Gullely

#### **REVIEW GENERAL FUND FINANCIAL MODEL**

**Sec. 8.3.** Of the funds appropriated in this act to the General Assembly, the sum of thirty-five thousand dollars (\$35,000) for the 1995-96 fiscal year shall be used to conduct a review of the General Fund Financial Model. The review shall be coordinated by the Fiscal Research Division of the Legislative Services Office, and shall be completed on or before February 1, 1996.

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

#### **STUDY JOB TRAINING PROGRAMS**

**Sec. 8.5.** (a) There is created the Joint Legislative Study Commission on Job Training Programs. The purpose of the Commission is to review State and federally funded job training programs currently in existence to determine the feasibility of eliminating or consolidating those which are duplicative, inefficient, or ineffective in carrying out their purposes and activities.

(b) The Commission shall consist of six members of the House of Representatives appointed by the Speaker of the House of Representatives and six members of the Senate appointed by the President Pro Tempore of the Senate. Members shall serve for the duration of the 1995-97 Session. Upon delivering its final report to the 1997 General Assembly the Commission shall expire. Vacancies on the Commission shall be filled by the appointing authority. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint one member to serve as cochair of the Commission.

(c) The Commission shall have the following powers and duties:

- (1) To review State and federal laws, rules, and regulations pertaining to job training programs to determine the purpose of each program, the population served, and each program's annual outcomes in terms of type of training received, work search efforts, and job placement;
- (2) To ascertain as far as possible the intention of the United States Congress with respect to continued funding of federally mandated job training programs, and any changes in funding formulae;

- (3) To review the amount of State and federal dollars appropriated for each job training program conducted in this State, and to review federal requirements for continuous federal funding of the programs;
- (4) To review the number of different State agencies that administer State and federal job training programs, the number of persons employed to implement each job training program, and the amount of State dollars needed annually to implement the program;
- (5) To determine whether federally funded job training programs in this State may lawfully be abolished or reduced in size by the General Assembly, and the impact of such reduction or elimination;
- (6) To conduct public hearings to receive citizen, State agency, and local government comment and experience with the job training programs;
- (7) To conduct other studies or activities to aid the Commission in carrying out its purpose and duties; and
- (8) To ensure program evaluation and accountability for all workforce development programs and to create a comprehensive statewide focus on workforce development

(d) The Commission shall make an interim report on its progress to the 1995 General Assembly, the Joint Legislative Commission on Governmental Operations, and the Joint Legislative Education Oversight Committee not later than May 1, 1996, and shall present its final report of findings and recommendations to the 1997 General Assembly, the Joint Legislative Commission on Governmental Operations, and the Joint Legislative Education Oversight Committee, upon its convening. The report shall identify each job training program operating in this State as of January 1, 1995, and shall recommend whether each program should be expanded, continued without change, abolished, consolidated with another program, or otherwise modified.

(e) Members of the Commission shall serve without pay but shall receive per diem and substance in accordance with Chapter 120 of the General Statutes. The facilities of the State Legislative Building and any other State office building used by the General Assembly shall be available to the Commission for its use.

(f) The Commission may use available clerical employees of the General Assembly, with the approval of the Legislative Services Commission. The Commission may, with the consent of the Legislative Services Commission, use employees of the Fiscal Research, Legislative Automated Systems, General Research, Legislative Drafting, and Public Information Divisions of the Legislative Services Commission.

(g) Notwithstanding G.S. 96-5(f), there is appropriated from the Worker Training Trust Fund to the General Assembly the sum of twenty-five thousand dollars (\$25,000) for the 1995-96 fiscal year and the sum of twenty-five thousand dollars (\$25,000) for the 1996-97 fiscal year to implement this section.

## PART 9. OFFICE OF THE GOVERNOR

Requested by: Representatives Ives, Lemmond, Culpepper, Senators Warren, Gulley

### **TOTAL QUALITY MANAGEMENT PROGRAM**

**Sec. 9.** For the 1995-96 fiscal year only, the provisions of G.S. 143-16.3 do not apply to the Total Quality Management Program in the Office of the Governor.

## **PART 10. OFFICE OF STATE BUDGET AND MANAGEMENT**

Requested by: Representatives Ives, Lemmond, Senator Warren

### **LOCAL FIRE PROTECTION FUNDS**

**Sec. 10.** The Office of State Budget and Management, in conjunction with the State Property Office, Department of Administration, shall study the current fire protection grant process. The Office of State Budget and Management shall report to the 1995 General Assembly, 1996 Regular Session, regarding its findings and recommendations.

In its study the Office of State Budget and Management and the State Property Office shall consider, but are not limited to, the following:

- (1) Fire protection grant history by political subdivision;
- (2) Inequities in the current grant process;
- (3) Impact of declining proportional shares on a fixed appropriation;
- (4) Improvements that could be made to the grant process, including:
  - a. An allocation based on current property values;
  - b. A method of updating property values over time; and
  - c. The recognition of fire protection funding requirements for new facilities.

Requested by: Senators Perdue, Martin of Pitt, Plyler, Odom, Rand, Jordan, Kerr, Representatives Mitchell, Weatherly

### **OSBM STUDY STATE-OWNED AIRCRAFT MODIFIED**

**Sec. 10.1.** Section 10.4 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 10.4. The Office of State Budget and Management shall study the use of State-owned aircraft aircraft, including associated and ancillary equipment such as aerial photographic cameras and related mapping services using instruments such as stereoplotters, and shall report the results of its study to the Joint Legislative Commission on Governmental Operations on or before April 1, 1996. The study shall include consideration of the following:

- (1) For each Department, the number and type of aircraft, the number of pilots, and the number and type of support personnel for aircraft.
- (2) For each Department, the budget for aircraft, the source of funding for aircraft, the number of hours the aircraft is available, and the number of hours the aircraft is used.
- (3) The feasibility and desirability of consolidating any or all State-owned aircraft operations.
- (4) The feasibility and desirability of sharing of aircraft by Departments.

- (5) The feasibility and desirability of Departments' contracting for aircraft services rather than owning their own aircraft.
- (6) Compilation and review of Departments' policies regarding authorized passengers on the aircraft and which Departmental personnel is responsible for determining which passengers are authorized."

## **PART 11. DEPARTMENT OF ADMINISTRATION**

Requested by: Senators Warren, Gulley, Representatives Ives, Lemmond, Culpepper

### **COST SHARING OF THE PERSONNEL MANAGEMENT INFORMATION SYSTEM**

**Sec. 11.** The Office of State Personnel shall develop a proposed schedule of fees or charges to be paid by each department and university to cover data processing costs that exceed the appropriation made by the General Assembly for maintenance of the system. The Office of State Personnel shall present the recommendation for the fee schedule to the Joint Appropriations Subcommittee on General Government and to the Fiscal Research Division during the 1996 Regular Session of the 1995 General Assembly. Departments and universities shall have on-line access to all data on their employees and positions, as well as access to public information on all State employees.

Requested by: Representatives Ives, Lemmond, Culpepper, Senators Warren, Gulley

### **WORKERS' COMPENSATION COST CONTAINMENT PROGRAM PILOT**

**Sec. 11.1.** The Office of State Budget and Management shall, after consultation with the Office of State Personnel, develop a pilot program that shall be known as the Workers' Compensation Cost Containment Program, to reduce the cost to State government of workers' compensation claims filed by State employees. The Office of State Budget and Management shall present the plans for the proposed pilot project to the Joint Legislative Commission on Governmental Operations for its comments and approval. Upon obtaining approval of the proposed pilot project from the Joint Legislative Commission on Governmental Operations, the Office of State Budget and Management may implement the pilot project, and shall choose, by a process of competitive bidding, a third-party administrator to manage claims processing.

Services provided by the third-party administrator shall include determination of compensability and related questions, incident reporting analysis, incident investigation, medical case management, disability management, and information management. Reimbursement to the third-party administrator shall be determined as a percentage of realized savings, calculated according to a methodology established by the Office of State Budget and Management. The Director of the Budget shall select agencies to participate in the pilot program and may transfer lapsed salary funds from the salary accounts of participating agencies to a Workers' Compensation



Reserve Fund established in the Office of State Budget and Management for the purpose of paying workers' compensation claims of employees of the participating agencies.

On or before April 1, 1996, the Office of State Budget and Management, after consultation with the Office of State Personnel, shall submit to the General Assembly a report setting forth the status of the program, the results achieved, and recommendations for any further action by the General Assembly as may be required.

Requested by: Senators Warren, Gulley, Representatives Ives, Lemmond, Culpepper

#### **GOVERNOR'S ADVOCACY COUNCIL FOR PERSONS WITH DISABILITIES**

**Sec. 11.2.** The Department of Human Resources shall continue to provide the current office space for the four regional offices of the Governor's Advocacy Council for Persons with Disabilities or office space that is comparable to that now used by the Council.

Requested by: Senators Plyler, Warren, Gulley, Representatives Ives, Lemmond, Culpepper

#### **CONSOLIDATE GRANTS PROCESS FOR CENTERS FOR VICTIMS OF DOMESTIC VIOLENCE**

**Sec. 11.3.** (a) Federal and State grant funds are available for centers for victims of domestic violence and the North Carolina Coalition Against Domestic Violence. However, an applicant must apply to the Department of Human Resources to obtain a grant funded by federal funds and to the Council on the Status of Women, Department of Administration, to obtain a grant funded by State funds. To eliminate the needless duplication of time, effort, and review, the Department of Administration and the Department of Human Resources shall develop and implement a consolidated grant application form and process for centers for victims of domestic violence and the North Carolina Coalition Against Domestic Violence. The forms and process shall be developed and implemented by July 1, 1996.

(b) The Fiscal Research Division shall study the feasibility of consolidating the function of administering the federal and State grants for centers for victims of domestic violence and the North Carolina Coalition Against Domestic Violence and shall report to the 1995 General Assembly, 1996 Regular Session, regarding its findings and recommendations.

#### **PART 11A. DEPARTMENT OF INSURANCE**

Requested by: Senators Warren, Gulley, Representatives Ives, Lemmond, Culpepper

#### **DECREASE CONSUMER PROTECTION FUND**

**Sec. 11A.** (a) G.S. 58-2-215 reads as rewritten:  
"§ 58-2-215. *Consumer Protection Fund.*

(a) A special fund is created in the Office of the State Treasurer, to be known as the Department of Insurance Consumer Protection Fund. The Fund shall be placed in an interest bearing account and any interest or other

income derived from the Fund shall be credited to the Fund. Moneys in the Fund shall only be spent pursuant to warrants drawn by the Commissioner on the Fund through the State Treasurer. The Fund shall be subject to the provisions of the Executive Budget Act; except that the provisions of Article 3C of Chapter 143 of the General Statutes do not apply to subdivision (b)(1) of this section.

(b) All moneys credited to the Fund shall be used only to pay the following expenses incurred by the Department:

- (1) For the purpose of retaining outside actuarial and economic consultants, legal counsel, and court reporting services in the review and analysis of rate filings, in conducting all hearings, and through any final adjudication.
- (2) In connection with any delinquency proceeding under Article 30 of this Chapter, for the purpose of locating and recovering the assets of or any other obligations or liabilities owed to or due an insurer that has been placed under such proceeding.
- (3) In connection with any civil litigation, other than under Chapter 150B of the General Statutes or any appeal from an order of the Commissioner or his deputies, that is commenced against the Commissioner or his deputies and that arises out of the performance of their official duties, for the purpose of retaining outside consultants, legal counsel, and court reporting services to defend such litigation.

(c) Moneys appropriated by the General Assembly shall be deposited in the Fund and shall become a part of the continuation budget of the Department of Insurance. Such continuation budget amount shall equal the actual expenditures drawn from the Fund during the prior fiscal year plus the official inflation rate designated by the Director of the Budget in the preparation of the State Budget for each ensuing fiscal year; provided that if interest income on the Fund exceeds the amount yielded by the application of the official inflation rate, such continuation budget amount shall be the actual expenditures drawn from the ~~Fund~~. Fund, except that the appropriation for the 1995-96 fiscal year shall not exceed the sum of seven hundred fifty thousand dollars (\$750,000) and for the 1996-97 fiscal year shall not exceed the sum of two hundred fifty thousand dollars (\$250,000). ~~In the event the amount in the Fund exceeds one million dollars (\$1,000,000) at the end of any fiscal year, two hundred fifty thousand dollars (\$250,000) at the end of any fiscal year, beginning with the 1995-96 fiscal year, such excess shall revert to the General Fund.~~

(d) In no event shall more than seventy percent (70%) of the amount in the Fund be allocated or spent for any one purpose specified in subsection (b) of this section in any fiscal year."

(b) Effective July 1, 1996, G.S. 58-2-215(d) is repealed.

(c) Effective June 30, 1995, Section 31 of Chapter 1069 of the 1989 Session Laws, Regular Session 1990, reads as rewritten:

"Sec. 31. Section 23 of this act does not apply to the 1990 automobile rate filing made pursuant to Article 36 of Chapter 58 of the General Statutes. Section 27 of this act shall expire at the end of the 1993-94 fiscal year and Section 28 shall become effective upon the expiration of Section

~~27. If the General Assembly does not appropriate or transfer funds in accordance with Sections 1, 22, 26, 27, or 28 of this act for a fiscal year, Sections 1 through 14 and Sections 23 through 30 of this act shall expire on the day after the General Assembly adjourns without making the appropriations or transfers; and the statutes amended by Sections 2 through 14, 23, and 26 shall read as they did immediately prior to the effective date of this act."~~

## PART 12. DEPARTMENT OF CULTURAL RESOURCES

Requested by: Senators Warren, Gulley, Representatives Ives, Lemmond, Culpepper

### REPEAL CAPITOL PRESERVATION COMMISSION

Sec. 12. (a) Chapter 682 of the 1993 Session Laws is repealed.

(b) G.S. 121-9 is amended by adding a new subsection, which reenacts the law as it existed prior to July 1, 1995:

"(h) Preservation and Custodial Care of State Capitol. -- The rotunda, corridors, and stairways of the first floor of the State Capitol and all portions of the second, third, and loft floors of the said building shall be placed in the custody of the Department of Cultural Resources; and the Department shall, subject to the availability of funds for the purpose, care for and administer these areas for the edification of present and future generations. The aforesaid areas shall be preserved as historic shrines and shall be maintained insofar as practicable as they shall appear following the restoration of the Capitol. The Department of Cultural Resources is authorized to deny the use of the legislative chambers for meetings in order that they, with their historic furnishings, may be better preserved for posterity; provided, however, that the General Assembly may hold therein such sessions as it may by resolution deem proper.

The Department of Cultural Resources is hereby entrusted with the responsibilities herein specified as being the agency with the experience best qualified to preserve and administer historic properties in a suitable manner. However, for the purposes of carrying out the provisions of this section, it is hereby directed that such cooperation and assistance shall be made available to the said Department of Cultural Resources and such labor supplied, as may be feasible, by the Department of Administration.

The offices and working areas of the first floor as well as all washrooms and the exterior of the Capitol shall remain under the jurisdiction of the Department of Administration: Provided, however, that the Department of Administration shall seek the advice of the Department of Cultural Resources in matters relating to any alteration, renovation, and furnishing of said offices and areas."

(c) This section is effective upon ratification.

Requested by: Representatives Ives, Lemmond, Senator Warren

### TECHNICAL CORRECTION/EXECUTIVE MANSION CURATOR TRANSFERRED

Sec. 12.1. Section 11.1 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 11.1. The position of Executive Mansion Curator (~~position number 4129-0101-0006-125~~) (position number 4149-0101-0006-125) is transferred from the Department of Administration to the Department of Cultural Resources. This transfer will permit the Department of Cultural Resources to better maintain the historical personal properties of the Executive Mansion. This provision does not affect, in any way, the jurisdiction of the Department of Administration over the Executive Mansion and its grounds."

Requested by: Representatives Ives, Lemmond, Senator Warren

#### **NUMBER OF POSITIONS IN DEPARTMENT OF CULTURAL RESOURCES REDUCED**

**Sec. 12.2.** Notwithstanding Section 28.2 of Chapter 324 of the 1995 Session Laws, there is a total reduction in the Continuation Budget Operations for the Department of Cultural Resources of 19.5 positions for the 1995-96 fiscal year and of 19.5 positions for the 1996-97 fiscal year. The revisions in Chapter 324 of the 1995 Session Laws, the Continuation Budget Operations Appropriations Act, for the Department of Cultural Resources for the 1995-96 fiscal year and for the 1996-97 fiscal year are as follows:

	1995-96	1996-97
(1230) Archives and History (\$90,618) R (\$90,618) R	-3.00	-3.00
(1241) Historic Sites (\$77,452) R (\$77,452) R	-3.00	-3.00
(1270) Museum of History (\$269,322) R (\$269,322) R	-9.50	-9.50
(1320) Museum of Art (\$29,495) R (\$29,495) R	-1.00	-1.00

Requested by: Representatives Culpepper, Ives, Lemmond, Holmes, Creech, Esposito, Senators Warren, Gulley, Plyler, Perdue, Odom

#### **NEWBOLD-WHITE HOUSE**

**Sec. 12.2A.** (a) The North Carolina Historical Commission shall study:

- (1) The feasibility and advisability of acquiring and operating the Newbold-White House together with adjacent lands now owned by the Perquimans County Historical Association in Perquimans County as a State Historic Site; and
- (2) The cost to the State of operating and maintaining the Newbold-White House as a State Historic Site.

(b) The North Carolina Historical Commission shall report its findings and recommendations to the three cochairs of the Senate Appropriations and Base Budget Committee, the three cochairs of the House of Representatives

Appropriations Committee, and the 1995 General Assembly, 1996 Regular Session.

Requested by: Senators Warren, Gulley. Representatives Ives, Lemmond, Culpepper

#### **HISTORIC SITES REPAIRS AND RENOVATIONS FUNDS**

**Sec. 12.3.** (a) Funds allocated in Section 5.3 of Chapter 324 of the 1995 Session Laws to the Office of State Budget and Management for the Repairs and Renovations Fund may be used to make needed repairs and renovations at the State Historic Sites.

(b) There is established the Historic Sites Repairs and Renovations Review Committee. The Committee shall consist of the following members: The three co-chairs of the Senate Appropriations and Base Budget Committee and the three co-chairs of the House of Representatives Appropriations Committee. The Office of State Budget and Management shall submit its proposal for the use of funds from the Repairs and Renovations Fund for historic sites to the Committee before submitting the proposal to the Joint Legislative Commission on Governmental Operations in accordance with Section 5.3 of Chapter 324 of the 1995 Session Laws.

Requested by: Senators Warren, Gulley, Plyler, Perdue, Odom, Representatives Ives, Lemmond, Culpepper, Holmes, Creech, Esposito

#### **GRANTS TO PUBLIC LIBRARIES**

**Sec. 12.4.** (a) Funds in the amount of two million dollars (\$2,000,000) appropriated in this act to the Department of Cultural Resources for the 1995-96 fiscal year shall be used as grants-in-aid for public libraries to assist in the purchase of books or for construction costs of public libraries and public school libraries. The Secretary of Cultural Resources shall award grants authorized by this section.

(b) The Department of Cultural Resources shall report to the Fiscal Research Division by December 1, 1995, regarding the grants made in accordance with this section.

Requested by: Senators Warren, Gulley. Representatives Ives, Lemmond, Culpepper

#### **GRANTS TO LOCAL MUSEUMS**

**Sec. 12.5.** (a) Funds in the amount of two million dollars (\$2,000,000) appropriated in this act to the Department of Cultural Resources for the 1995-96 fiscal year shall be used as grants-in-aid for local museums. The Secretary of Cultural Resources may require a match by non-State funds as deemed appropriate.

(b) The Department of Cultural Resources shall report to the Fiscal Research Division by December 1, 1995, regarding the grants made in accordance with this section.

Requested by: Senators Warren, Gulley. Representatives Ives, Lemmond, Culpepper

#### **ROANOKE ISLAND COMMISSION**

**Sec. 12.6.** (a) G.S. 143B-131.1 reads as rewritten:



*"§ 143B-131.1. Commission established.*

There is established the Roanoke Island Commission. The Commission shall be an independent commission, but shall be located within the Department of Cultural Resources for ~~organizational, budgetary, and administrative~~ historic resource management, organizational, and budgetary purposes."

(b) G.S. 143B-131.2 reads as rewritten:

*"§ 143B-131.2. Roanoke Island Commission -- ~~Powers~~ Purpose, powers, and duties.*

(a) The Commission is created to combine various existing entities in the spirit of cooperation for a cohesive body to protect, preserve, develop, and interpret the historical and cultural assets of Roanoke Island. The Commission is further created to operate and administer the Elizabeth II State Historic Site and Visitor Center, the Elizabeth II, Ice Plant Island, and all other properties under the administration of the Department of Cultural Resources located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo, except as otherwise determined by the Commission.

(b) The Commission ~~may~~ shall have the following powers and duties:

- (1) Advise To advise the Secretary of Transportation and adopt rules on matters pertaining to, affecting, and encouraging restoration, preservation, and enhancement of the ~~appearance and appearance,~~ maintenance, and aesthetic quality of U.S. Highway 64/264 and N.C. 400 travel corridors on Roanoke Island, Island and the grounds on Ice Plant Island.
- (2) Advise the Secretary of the Department of Cultural Resources and adopt rules on matters pertinent to the operation and maintenance of To operate the Elizabeth II State Historic Site and Visitor Center and the Elizabeth II as permanent memorials commemorating the Roanoke Voyages, 1584-1587.
- (3) Advise the Secretary of the Department of Cultural Resources and adopt rules on matters pertinent to To supervise the development of Ice Plant Island and to manage future facilities in cooperation with the Department of Cultural Resources, facilities.
- (4) Advise To advise the Secretary of the Department of Cultural Resources on matters pertinent to historical and cultural events on Roanoke Island.
- (5) With the assistance of the Department of Cultural Resources, to identify, preserve, and protect properties located on Roanoke Island having historical significance to the State of North Carolina, Dare County, or the Town of Manteo consistent with applicable State laws and ~~Department~~ rules.
- (6) Make recommendations to the Secretary of the Department of Cultural Resources for establishing and providing a proper To establish and collect a charge for admission to the ship, and for the maintenance and operation of the ship, the visitor center, and the grounds as a permanent memorial and exhibit, any property or event operated by the Commission.
- (7) Solicit To solicit and accept gifts, grants, and donations.

- (8) ~~Cooperate~~ To cooperate with the Secretary and Department of Cultural Resources, the Secretary and Department of Transportation, the Secretary and Department of Environment, Health, and Natural Resources, and other governmental agencies, officials, and entities, and provide them with assistance and advice.
  - (9) ~~Adopt~~ To adopt and enforce such bylaws, rules, ~~regulations~~, and guidelines that the Commission deems to be reasonably necessary in order to carry out its powers and duties. Chapter 150B of the General Statutes does not apply to the adoption of rules by the Commission.
  - (10) ~~Establish~~ To establish and maintain a "~~Roanoke Island Commission Fund~~" separate fund composed of moneys which may come into its hands from gifts, donations, grants, or bequests, which funds will be used by the Commission for purposes of carrying out its duties and purposes herein set forth. The Commission may also establish a reserve fund to be maintained and used for contingencies and emergencies.
  - (11) By cooperative arrangement with other agencies, groups, individuals, and other entities, to coordinate and schedule historical and cultural events on Roanoke Island.
  - (12) Make recommendations to the Secretary of Cultural Resources concerning personnel and budgetary matters.
  - (13) ~~Acquire~~ To acquire real and personal property by purchase, gift, bequest, devise, and exchange.
  - (14) To administer the Roanoke Island Commission Fund and the Roanoke Island Commission Endowment Fund as provided in G.S. 143B-131.8.
- (b) ~~Contract Authority.~~ -- The Commission may
- (15) To procure supplies, services, and property as appropriate and may to enter into contracts, leases, or other legal agreements consistent with State laws and Department rules to carry out the purposes of this Part and duties of the Commission."
- (c) Part 27A of Article 2 of Chapter 143B of the General Statutes is amended by adding the following sections:
- "§ 143B-131.8. Roanoke Island Commission Fund; Roanoke Island Commission Endowment Fund.
- (a) The Roanoke Island Commission Fund is established as a nonreverting Fund and shall be administered by the Roanoke Island Commission. Seventy-five percent (75%) of the revenues collected from any property operated by the Roanoke Island Commission shall be credited to the Fund. In addition, gifts, donations, grants, or bequests received by the Commission for the purpose of carrying out its duties and purposes may also be deposited in the Fund.
- The funds in the Roanoke Island Commission Fund shall be used for the expenses of the Roanoke Island Commission and the operation and maintenance of properties operated by the Commission.
- (b) The Roanoke Island Commission Endowment Fund is established as a nonreverting Fund and shall be administered by the Commission. Twenty-

five percent (25%) of the revenue collected from any property operated by the Roanoke Island Commission shall be credited to the Fund. Until July 1, 2000, the revenues credited to the Roanoke Island Commission Endowment Fund and the interest earned on the revenue shall be held in reserve to create the principal for the Fund.

On and after July 1, 2000, eighty percent (80%) of the interest generated by the principal in the Roanoke Island Commission Endowment Fund shall be used by the Roanoke Island Commission to carry out its duties and purposes as set out by this Part. The Roanoke Island Commission may also use those interest funds for capital expenditures for the properties operated by the Commission.

"§ 143B-131.9. *Roanoke Island Commission staff.*

The Commission shall appoint and fix the salary of an Executive Director to serve at its pleasure and may hire other employees. Employees of the Commission who were transferred from the Department of Cultural Resources as of July 1, 1995, and who were subject to the State Personnel Act, Chapter 126 of the General Statutes, at the time of the transfer shall continue to be subject to that act. Employees of the Commission who were transferred but were not subject to the State Personnel Act at the time of transfer are not subject to the State Personnel Act. Employees of the Commission who were not transferred are not subject to the State Personnel Act unless the Commission designates the employee's position as subject to the State Personnel Act when the employee is hired. Once designated, a position remains subject to the State Personnel Act unless exempted in accordance with that act.

"§ 143B-131.10. *Exceptions.*

Notwithstanding G.S. 143-28, the following provisions do not apply to this Part: G.S. 143-16.3 and G.S. 143-23."

(d) The personnel, personal property, and unexpended balances of appropriations, allocations, or other funds for the Elizabeth II State Historic Site and Visitor Center, the Elizabeth II, and the Roanoke Island Commission are transferred from the Department of Cultural Resources to the Roanoke Island Commission.

(e) This section is effective upon ratification.

## **PART 13. STATE BOARD OF ELECTIONS**

Requested by: Representatives Lemmond, Ives, Culpepper, Senators Warren, Gulley

### **STATE BOARD OF ELECTIONS AUTHORITY TO SELL SOFTWARE FOR CAMPAIGN REPORTING**

**Sec. 13.1.** (a) G.S. 66-58(c) as amended by Chapter 247 of the 1995 Session Laws reads as rewritten:

"(c) The provisions of subsection (a) shall not prohibit:

- (1) The sale of products of experiment stations or test farms.
- (2) The sale of learned journals, works of art, books or publications of the Department of Cultural Resources or other agencies, or the Supreme Court Reports or Session Laws of the General Assembly.

- (3) The business operation of endowment funds established for the purpose of producing income for educational purposes; for purposes of this section, the phrase 'operation of endowment funds' shall include the operation by public postsecondary educational institutions of campus stores, the profits from which are used exclusively for awarding scholarships to defray the expenses of students attending the institution; provided, that the operation of such stores must be approved by the board of trustees of the institution, and the merchandise sold shall be limited to educational materials and supplies, gift items and miscellaneous personal-use articles. Provided further that sales at campus stores are limited to employees of the institution and members of their immediate families, to duly enrolled students of the campus at which a campus store is located and their immediate families, to duly enrolled students of other campuses of the University of North Carolina other than the campus at which the campus store is located, to other campus stores and to other persons who are on campus other than for the purpose of purchasing merchandise from campus stores. It is the intent of this subdivision that campus stores be established and operated for the purpose of assuring the availability of merchandise described in this Article for sale to persons enumerated herein and not for the purpose of competing with stores operated in the communities surrounding the campuses of the University of North Carolina.
- (4) The operation of lunch counters by the Department of Human Resources as blind enterprises of the type operated on January 1, 1951, in State buildings in the City of Raleigh.
- (5) The operation of a snack bar and cafeteria in the State Legislative Building.
- (6) The maintenance by the prison system authorities of eating and sleeping facilities at units of the State prison system for prisoners and for members of the prison staff while on duty, or the maintenance by the highway system authorities of eating and sleeping facilities for working crews on highway construction or maintenance when actually engaged in such work on parts of the highway system.
- (7) The operation by penal, correctional or facilities operated by the Department of Human Resources or by the State Department of Agriculture, of dining rooms for the inmates or clients or members of the staff while on duty and for the accommodation of persons visiting such inmates or clients, and other bona fide visitors.
- (8) The sale by the Department of Agriculture of livestock, poultry and publications in keeping with its present livestock and farm program.
- (9) The operation by the public schools of school cafeterias.

- (10) Sale by any State correctional or other institution of farm, dairy, livestock or poultry products raised or produced by it in its normal operations as authorized by the act creating it.
- (11) The sale of textbooks, library books, forms, bulletins, and instructional supplies by the State Board of Education, State Department of Public Instruction, and local school authorities.
- (12) The sale of North Carolina flags by or through the auspices of the Department of Administration, to the citizens of North Carolina.
- (13) The operation by the Department of Correction of forestry management programs on State-owned lands, including the sale on the open market of timber cut as a part of such management program.
- (14) The operation by the Department of Correction of facilities to manufacture and produce traffic and street name signs for use on the public streets and highways of the State.
- (15) The operation by the Department of Correction of facilities to manufacture and produce paint for use on the public streets and highways of the State.
- (16) The performance by the Department of Transportation of dredging services for a unit of local government.
- (17) The sale by the State Board of Elections to political committees and candidate committees of computer software designed by or for the State Board of Elections to provide a uniform system of electronic filing of the campaign finance reports required by Article 22A of Chapter 163 of the General Statutes and to facilitate the State Board's monitoring of compliance with that Article. This computer software for electronic filing of campaign finance reports shall not exceed a cost of one hundred dollars (\$100.00) to any political committee or candidate committee without the State Board of Elections first notifying in writing the Joint Legislative Commission on Governmental Operations."

(b) The funds appropriated in this act to the State Board of Elections for the purchase of developing computer software to provide a uniform system of electronic filing of campaign finance reports shall be expended for development of software for use by the State Board of Elections and political committees or candidate committees.

Requested by: Representatives Ives, Lemmond, Culpepper, Senators Warren, Gulley

#### **FUNDS FOR STATEWIDE COMPUTERIZED VOTER REGISTRATION.**

**Sec. 13.2.** (a) The State Board of Elections shall promulgate rules for a statewide computerized voter registration system following the basic client-server design of Alternative C and D as described in the Needs Assessment and Requirements Analysis report prepared pursuant to Section 16 of Chapter 762 of the 1993 Session Laws, Regular Session 1994. Those rules shall include data format standards, data communication standards, and data content standards. The State Board of Elections shall promulgate those rules, including the standards, no later than July 1, 1996. Counties shall



adhere to the rules and standards no later than July 1, 1997. The statewide computerized voter registration system shall utilize current technology and be consistent with State standards. That system shall be developed by the State Board of Elections and processed on the computer/servers of the State Information Processing Services Division of the Office of the State Controller.

(b) There are established two reserve funds, to be known as the Reserve Fund for Statewide Computerized Voter Registration/Central Server Component and the Reserve Fund for Statewide Computerized Voter Registration/County Grants Component. The reserve funds shall be funded as follows:

- (1) For the 1995-96 fiscal year, funds in the amount of one million five hundred thousand dollars (\$1,500,000) shall be transferred from the reserve fund created by Section 16(b) of Chapter 769 of the 1993 Session Laws, Regular Session 1994, to the Reserve Fund for Statewide Computerized Voter Registration/Central Server Component. The State Board of Elections shall use those funds for software development, communications and computer charges, and data conversion charges to implement the central server component of the system designed by the rules promulgated under subsection (a) of this section. The State Board of Elections shall use no more than four hundred forty thousand dollars (\$440,000) of those funds to purchase hardware, office furniture, and the services of time-limited computer personnel.
- (2) Of the funds appropriated in this act for the 1996-97 fiscal year to the State Board of Elections, the sum of three million five hundred thousand dollars (\$3,500,000) shall be deposited in the Reserve Fund for Statewide Computerized Voter Registration/County Grants Component, to be used by the State Board of Elections for grants-in-aid to counties to purchase computer equipment, data communication charges, data conversion, computer consultants or time-limited personnel at the State Board of Elections, travel, education, and training to ensure that all counties' minimum needs for participation in the statewide computerized voter registration system are met. Any additional needs beyond the minimum required for system participation are the responsibility of the counties. The State Board of Elections shall develop and issue rules related to a grant process for grant applications and grant awards to counties. The rules shall be developed and issued no later than February 15, 1996. Grants-in-aid to county boards of elections shall be awarded no later than July 31, 1996. The rules shall provide that the computerized voter registration system has uniform quality statewide, and the grants shall be issued in such a way as to achieve that goal within available resources. In developing the rules, the State Board of Elections shall consider giving special attention to:
  - a. Low-wealth counties;
  - b. Counties that have demonstrated a willingness to invest in computer infrastructure; and

- c. Counties that demonstrate a willingness to provide matching funds.

(c) The State Board of Elections may spend money from the reserve funds created by subsection (b) of this section only after the State Board of Elections and the Information Resource Management Commission have jointly approved and presented a detailed implementation plan for statewide computerized voter registration to the Joint Legislative Commission on Governmental Operations. That implementation plan shall include:

- (1) A description of the system being implemented;
- (2) A description of the system's capabilities;
- (3) An itemized estimate of the costs of the system, with a justification for each item;
- (4) A list of the counties to be brought into the system during the fiscal year;
- (5) A project management plan.

After their initial joint report, the State Board of Elections and the Information Resource Management Commission shall make quarterly joint reports to the Joint Legislative Commission on Governmental Operations, describing the status of the project, listing the counties that have been brought into the system and that are planned to be brought into the system, and the costs.

(d) To the extent that this section or action taken under it conflicts with G.S. 163-82.11 through G.S. 163-82.13 or Section 16 of Chapter 769 of the 1993 Session Laws, this section or those actions prevail to the extent of the conflict. Except to the extent of the conflict, Section 16 of Chapter 769 of the 1993 Session Laws remains in effect.

## PART 15. COLLEGES AND UNIVERSITIES

Requested by: Representatives Grady, Preston, Senators Plexico, Winner  
**MEHARRY MEDICAL COLLEGE**

**Sec. 15.** The Board of Governors of The University of North Carolina shall develop and implement a plan to recruit and attract graduates of Meharry Medical College who are North Carolina residents for whom State financial support was provided to Meharry Medical College. The Board's plan shall include informing the students of the State support, providing information about medical residency opportunities in North Carolina, and any other relevant information about opportunities for medical and dental practice in North Carolina. The Office of Rural Health and the Area Health Education Centers shall assist the Board in developing and implementing the plan. The Board shall include State supported graduates of Meharry Medical College in its monitoring report required by G.S. 143-613(d) on primary care physicians. Meharry Medical College shall supply information necessary for the Board to comply with this section.

Requested by: Representatives Grady, Preston, Ramsey, Cummings, Senators Plexico, Winner, Conder

## **SCHOOL OF SCIENCE AND MATHEMATICS**

**Sec. 15.1.** G.S. 116-235 (b) reads as rewritten:

"(b) Students. --

- (1) Admission of Students. -- The School shall admit students in accordance with criteria, standards, and procedures established by the Board of Trustees. To be eligible to be considered for admission, an applicant must be a legal resident of the State, as defined by G.S. ~~116-143.1~~; 116-143.1(a)(1); eligibility to remain enrolled in the School shall terminate at the end of any school year during which a student becomes a nonresident of the State. The Board of Trustees shall ensure, insofar as possible without jeopardizing admission standards, that an equal number of qualified rising high school juniors is admitted to the program and to the residential summer institutes in science and mathematics from each of North Carolina's congressional districts. In no event shall the differences in the number of rising high school juniors offered admission to the program from each of North Carolina's congressional districts be more than two and one-half percentage points from the average number per district who are offered admission.
- (2) School Attendance. -- Every parent, guardian, or other person in this State having charge or control of a child who is enrolled in the School and who is less than 16 years of age shall cause such child to attend school continuously for a period equal to the time which the School shall be in session. No person shall encourage, entice, or counsel any child to be unlawfully absent from the School. Any person who aids or abets a student's unlawful absence from the School shall, upon conviction, be guilty of a Class 3 misdemeanor. The Director of the School shall be responsible for implementing such additional policies concerning compulsory attendance as shall be adopted by the Board of Trustees, including regulations concerning lawful and unlawful absences, permissible excuses for temporary absences, maintenance of attendance records, and attendance counseling.
- (3) Student Discipline. -- Rules of conduct governing students of the School shall be established by the Board of Trustees. The Director, other administrative officers, and all teachers, substitute teachers, voluntary teachers, teacher aides and assistants, and student teachers in the School may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order."

Requested by: Representatives Fox, Grady, Preston, Senators Plexico, Winner, Kerr

#### UNC VISUAL IMPAIRMENT TEACHER TRAINING CURRICULUM

**Sec. 15.2.** (a) The Board of Governors of The University of North Carolina shall select a school of education from within The University of North Carolina and direct the school to establish an interstate consortium of universities located in the southeastern United States with the following purposes:

- (1) To collaboratively devise an appropriate curriculum for the training of teachers to work with visually impaired students.
- (2) To seek foundation grants to support the cooperative program of teacher education.
- (3) To work together in the implementation and operation of the program providing the needed training experiences for students from those states that become a part of the consortium.

(b) The school of education designated by the Board of Governors of The University of North Carolina to establish the interstate consortium shall try to recruit one university from each of the states in the southeastern United States. The program developed by the interstate consortium shall be operated at the school of education designated by the Board of Governors to undertake the project and shall utilize technology for long-distance learning within the State and among the other states in the consortium. The program shall be funded by all states participating in the consortium in addition to grants obtained by the consortium.

(c) The program designed by the consortium shall be implemented collaboratively with the North Carolina Department of Human Resources through the Division of Services for the Blind. The Governor Morehead School shall be used as a clinical site for the students in the program. The program shall be designed to meet certification requirements that are set by the licensing agencies in the states participating in the consortium. The program shall offer a masters degree in visual impairments and shall also offer courses for special education teachers to enable them to extend their certification to include visual impairments.

(d) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Commission by March 1, 1996, regarding the progress in implementing this section.

Requested by: Representatives Grady, Preston, Senators Plexico, Winner, Hoyle

#### **UNC CAPITAL IMPROVEMENT PRIORITIES**

**Sec. 15.3.** (a) The Board of Governors of The University of North Carolina shall develop a capital improvement request process that can be used to make its capital priorities across campuses known to the General Assembly. This process shall include needs criteria based on mission, enrollment, adequacy of facilities, the functional age of the facilities, utilization of facilities and other objective factors.

(b) The Board of Governors shall report to the Joint Legislative Education Oversight Committee by April 1, 1996, regarding the development of the capital improvement request process.

Requested by: Representatives Grady, Preston, Rogers, Senators Plexico, Winner, Warren

#### **ECU MEDICAL SCHOOL RECEIPTS**

**Sec. 15.4.** Chapter 116 of the General Statutes is amended by adding a new section to read:

"§ 116-36.6. East Carolina University School of Medicine; Medicare receipts.

The East Carolina University School of Medicine shall request, on a regular basis consistent with the State's cash management plan, funds earned by the School from Medicare reimbursements for education costs. Upon receipt, these funds shall be allocated as follows:

- (1) The portion of the Medicare reimbursement generated through the effort and expense of the School of Medicine's Medical Faculty Practice Plan shall be transferred to the appropriate Medical Faculty Practice Plan account within the School of Medicine. The Medical Faculty Practice Plan shall assume responsibility for any of these funds that subsequently must be refunded due to final audit settlements.
- (2) The funds from this source budgeted by the General Assembly as part of the School of Medicine's General Fund budget code shall be credited to that code as a receipt.
- (3) The remainder of the funds shall be transferred to a special fund account on deposit with the State Treasurer. This special fund account shall be used for any necessary repayment of Medicare funds due to final audit settlements for funds allocated under subdivision (2) of this subsection. When the amount of these reimbursement funds has been finalized by audit for each year, those funds remaining in the special fund shall be available for specific capital improvement projects for the East Carolina University School of Medicine. Requests by East Carolina University for use of these funds shall be made to the Board of Governors of The University of North Carolina. Approval of projects by the Board of Governors shall be reported to the Joint Legislative Commission on Governmental Operations, and the reports shall include projected costs and sources of funds for operation of the approved projects."

Requested by: Senators Plexico, Winner, Conder, Representatives Grady, Preston, Cummings

**STATE EDUCATION ASSISTANCE AUTHORITY/FEDERAL MATCHING FUNDS**

**Sec. 15.5.** Funds appropriated in Chapter 324 of the 1995 Session Laws to the Board of Governors of The University of North Carolina for use by the State Education Assistance Authority to match federal grants under the Federal State Student Incentive Grant program shall remain available to assist needy students in meeting postsecondary education expenses irrespective of the receipt by the State Education Assistance Authority of any federal funds for such purpose. In the event federal funds are not available for such purposes, the eligibility for funds under this section shall be limited to resident students attending a constituent institution of The University of North Carolina, a community college as defined by G.S. 115D-2(2), or a private institution as defined by G.S. 116-22(1).

Requested by: Representatives Grady, Preston, Senators Perdue, Plexico, Rand, Winner, Odom, Plyler



**MILITARY PERSONNEL/BUDGETING OF SUMMER SCHOOL CREDIT HOURS**

**Sec. 15.6.** For State budget purposes, credit hours taken in summer school at a constituent institution of The University of North Carolina by military personnel as defined in G.S. 116-143.3(a) and G.S. 116-143.3(b) shall be budgeted as resident credit hours.

Requested by: Representatives Grady, Preston, Senators Plexico, Winner  
**REPORTS ON UNC VENDING FACILITIES**

**Sec. 15.7.** G.S. 116-36.4 reads as rewritten:

*"§ 116-36.4. Vending facilities.*

~~The Board of Governors shall, not later than October 1 of each year, review an itemized annual report in a format to be determined by the Office of State Budget and Management. Each institution shall provide to the director of the Budget and the State Auditor such information as they may from time to time require concerning the use of net proceeds from operations of vending facilities for the previous fiscal year under G.S. 116-36.1. Net proceeds may be used only as authorized by the Board of Governors, but this section does not authorize expenditures for purposes not otherwise authorized by law. The report shall be itemized by campus and by authorized purpose. The Board shall also review an annual report from the UNC Hospitals, monitoring compliance with G.S. 143-12.1(f1). A copy of the report shall be provided to the Fiscal Research Division of the Legislative Services Office."~~

Requested by: Senators Plexico, Winner, Conder, Representatives Grady, Preston, Cummings

**ALLIED HEALTH PROFESSIONS**

**Sec. 15.8.** Of the funds provided to the Board of Governors for expansion funding through receipts, the amount of one million seven hundred thousand dollars (\$1,700,000) each fiscal year of the biennium shall be allocated for expansion of program offerings and enrollment for training of allied health professionals.

Requested by: Representatives Grady, Preston, Cummings, Senators Plexico, Winner, Conder

**AHEC/SCHOOL OF NURSING CENTERS**

**Sec. 15.9.** Of the funds provided to the Board of Governors of The University of North Carolina for expansion funding through receipts for University Institutional Programs, the sum of two million dollars (\$2,000,000) shall be allocated each year of the biennium for the Area Health Education Centers for initiatives in primary care and training of mid-level practitioners. Of these additional funds, the sum of twenty-five thousand dollars (\$25,000) shall be used to increase funding for the Raleigh School of Nurse Anesthesia from fifty thousand dollars (\$50,000) to seventy-five thousand dollars (\$75,000) per year.

Requested by: Representatives Grady, Preston, Cummings, Senators Plexico, Winner, Conder

**UNC PILOT OFF-CAMPUS SITES**

**Sec. 15.10.** Of the funds provided to the Board of Governors of The University of North Carolina for expansion funding through receipts in this act, one million dollars (\$1,000,000) each fiscal year shall be used to establish pilot degree programs at sites located away from the campuses of the constituent institutions and to expand educational opportunities at those sites. The Board shall consider sites on community college campuses, especially those with a higher proportion of college transfer student enrollment, sites easily accessible to military personnel and other citizens, and sites remote from the constituent institutions' main campuses. Funds may be used to fund campuses for full-time equivalent enrollment at those sites, to improve library collections for the programs offered at the site, or for other purposes deemed appropriate by the Board.

The Board shall report to the Joint Education Oversight Committee on this effort by December 1996.

Requested by: Representatives Grady, Preston, Cummings, Senators Plexico, Winner, Conder

**AGRICULTURE EDUCATION PROGRAM FUNDS**

**Sec. 15.11.** (a) Of the funds provided to the Board of Governors of The University of North Carolina, the sum of five hundred eighty-five thousand dollars (\$585,000) for the 1995-96 fiscal year and the sum of five hundred eighty-five thousand dollars (\$585,000) for the 1996-97 fiscal year shall be allocated to the College of Agriculture and Life Sciences at North Carolina State University for personnel positions and related office and travel expenses to provide overall leadership, coordination, and structure for agricultural education programs and Future Farmers of America activities in the public schools of North Carolina.

(b) The positions in this section are:

- (1) A State Agricultural Education Coordinator, located in the Department of Agricultural and Extension Education at North Carolina State University;
- (2) Three Regional Consultants who are responsible to the State Agricultural Education Coordinator; and
- (3) A State Future Farmers of America Director, who is responsible to the State Agricultural Education Coordinator and the Board of Directors of the North Carolina Association of Future Farmers of America, Incorporated. The Executive Director and staff of the North Carolina Future Farmers of America Foundation are provided by the North Carolina Future Farmers of America Foundation, Incorporated, and the Director and staff of the North Carolina Future Farmers of America Center are provided by the North Carolina Association of Future Farmers of America, Inc.

(c) The Office of the Governor and the State Board of Education, the Superintendent of Public Instruction, and other State agencies responsible for vocational and technical education in the public schools shall maintain close working relationships with the State Agricultural Education Coordinator. The State Agricultural Education Coordinator and those

agencies shall cooperate and collaborate to provide resources that will ensure quality agricultural education programs in the public schools.

Requested by: Senators Odom, Perdue, Plyler, Plexico, Rand, Winner, Representatives Grady, Preston, Cummings

### **SELECTION OF DISTINGUISHED PROFESSORS**

**Sec. 15.12.** G. S. 116-41.18 is amended by adding a new subsection to read:

"(a1) No rule shall prevent the constituent institutions of The University of North Carolina from selecting holders of Distinguished Professorships from among existing faculty members or newly hired faculty members."

Requested by: Senators Martin of Guilford, Plexico, Winner, Conder, Representatives Grady, Preston, Cummings

### **NORTH CAROLINA A & T STATE UNIVERSITY APPLIED MANUFACTURING AND EDUCATION CENTER**

**Sec. 15.13.** Funds in the amount of three million five hundred thousand dollars (\$3,500,000) were appropriated in Section 6 of Chapter 561 of the 1993 Session Laws to the Board of Governors for the Applied Manufacturing and Education Center at North Carolina Agricultural and Technical State University. The remainder of those funds may be used by North Carolina Agricultural and Technical State University for the 1995-96 fiscal year and for the 1996-97 fiscal year for capital, operating, and equipment expenses of the Piedmont Triad Center for Advanced Manufacturing.

All funds expended for equipment shall be for the Piedmont Triad Center for Advanced Manufacturing, and shall remain under the ownership of this entity or North Carolina Agricultural and Technical State University.

Requested by: Senator Rand

### **ACADEMIC ENHANCEMENT FUNDS**

**Sec. 15.15.** (a) Notwithstanding G.S. 116-143, the Board of Trustees of a constituent institution designated as a Research University I campus of The University of North Carolina may increase tuition at the constituent institution by an amount not to exceed four hundred dollars (\$400.00) per full-time student per regular term academic year. All additional revenues derived from these tuition increases shall remain for use on that campus and are in addition to the operating budgets approved by the General Assembly. If the Board of Trustees of an institution increases tuition, the chancellor must allocate a minimum of thirty-five percent (35%) of the funds provided by the tuition increase for need-based financial aid. The balance of the funds may be allocated for faculty salaries or library budgets. Students who are already receiving need-based financial aid or who are eligible for need-based financial aid shall have their financial aid awards increased to cover the tuition increase allowed under this subsection. Funding for these financial aid increases shall be the top priority for use of the financial aid funds provided in this subsection, but any source of funds may be used to cover the tuition increases for students receiving need-based financial aid.

(b) Notwithstanding G.S. 116-143, the Board of Trustees of a constituent institution of The University of North Carolina which has a professional school (law, medicine, dentistry, pharmacy, and veterinary medicine) or masters degree in Business Administration may increase tuition for students in the professional school by an amount not to exceed three thousand dollars (\$3,000) per full-time nonresident student per regular term academic year or by an amount not to exceed four hundred dollars (\$400.00) per full-time resident student per regular term academic year. If the Board of Trustees of an institution increases tuition for students in a professional school, the funds provided by the increase shall remain on that campus and be used to enhance that professional school. In no case shall a student attending a professional school be subject to a tuition increase allowable under this section greater than the amounts stated in this subsection.

(c) Once a Board of Trustees decides to increase tuition at a constituent institution, the institution shall notify the Board of Governors, the Office of State Budget and Management, and the Fiscal Research Division of the amount of increase, additional receipts anticipated, and the allocation of the funds among various programs in a format prescribed by the Board of Governors of The University of North Carolina.

(d) No employee of the University of North Carolina System who earns one hundred thousand dollars (\$100,000) or more a year shall receive additional remuneration from these funds.

Requested by: Senators Winner, Plexico, Conder, Representatives Grady, Preston, Cummings

#### UNC/UNIFORM REVERSION RATE

Sec. 15.16. G.S. 116-30.3 reads as rewritten:

"§ 116-30.3. *Reversions.*

(a) Of the General Fund current operations appropriations credit balance remaining at the end of each fiscal year in each budget code of a special responsibility constituent institution at the close of a fiscal year, institution, except for the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount greater than the percentage of the General Fund appropriations historically reverted to the State treasury over the preceding five fiscal years, multiplied by the General Fund appropriations for that budget code, two percent (2%) of the General Fund appropriation for that fiscal year may be carried forward by the institution to the next fiscal year and may be used for one-time expenditures that will not impose additional financial obligations on the State. Of the General Fund current operations appropriations credit balance remaining in the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount greater than one percent (1%) of the General Fund appropriation for that fiscal year may be carried forward in that budget code to the next fiscal year and may be used for one-time expenditures that will not impose additional financial obligations on the State. However, the amount carried forward under this section shall not exceed two and one-half percent (2 1/2%) of the General Fund appropriation. The historic reversion percentage shall be determined by the



~~Director of the Budget, after making adjustments for allotment reductions made to meet revenue shortfalls and to force credit balances during the preceding five fiscal years under the authority set forth in G.S. 143-25. The Director of the Budget, under the authority set forth in G.S. 143-25, shall establish the General Fund current operations credit balance remaining in each budget code of each institution.~~

~~(b) Any special responsibility constituent institution that does not revert a percentage of the General Fund appropriations for the budget code equal to the five-year historic reversion rate established in this section. An institution shall cease to be a special responsibility constituent institution under the following circumstances:~~

- ~~(1) An institution, other than the Area Health Education Centers of the University of North Carolina, does not revert at least two percent (2%) of its General Fund current operations credit balance remaining in each budget code of that institution, or~~
- ~~(2) The Area Health Education Centers of the University of North Carolina at Chapel Hill does not revert at least one percent (1%) of its General Fund current operations credit balance remaining in its budget code.~~

~~unless the Board of Governors finds that the low reversion rate is due to adverse and unforeseen conditions. In this instance, However, if the Board of Governors finds that the low reversion rate is due to adverse and unforeseen conditions, the Board may allow the institution to remain a special responsibility constituent institution for one year to come into conformity with this section. The Board may make this exception only one time for any special responsibility constituent institution, and shall report these exceptions to the Joint Legislative Commission on Governmental Operations."~~

Requested by: Senators Plexico, Winner, Hoyle, Conder, Representatives Grady, Preston, Cummings

#### UNC MISSION

**Sec. 15.17.** G.S. 116-1 reads as rewritten:

"§ 116-1. *Purpose.*

(a) In order to foster the development of a well-planned and coordinated system of higher education, to improve the quality of education, to extend its benefits and to encourage an economical use of the State's resources, the University of North Carolina is hereby redefined in accordance with the provisions of this Article.

(b) The University of North Carolina is a public, multicampus university dedicated to the service of North Carolina and its people. It encompasses the 16 diverse constituent institutions and other educational, research, and public service organizations. Each shares in the overall mission of the university. That mission is to discover, create, transmit, and apply knowledge to address the needs of individuals and society. This mission is accomplished through instruction, which communicates the knowledge and values and imparts the skills necessary for individuals to lead responsible, productive, and personally satisfying lives; through research, scholarship, and creative activities, which advance knowledge and enhance the



educational process; and through public service, which contributes to the solution of societal problems and enriches the quality of life in the State. In the fulfillment of this mission, the university shall seek an efficient use of available resources to ensure the highest quality in its service to the citizens of the State.

Teaching and learning constitute the primary service that the university renders to society. Teaching, or instruction, is the primary responsibility of each of the constituent institutions. The relative importance of research and public service, which enhance teaching and learning, varies among the constituent institutions, depending on their overall missions."

Requested by: Senator Plexico

#### **UNC-ASHEVILLE/KELLOGG CENTER FUNDS**

**Sec. 15.18.** Of the funds appropriated to the Board of Governors of The University of North Carolina for capital improvements the sum of five hundred thousand dollars (\$500,000) for the 1995-96 fiscal year shall be used for the Kellogg Center at the University of North Carolina at Asheville as a repository of mountain crafts.

Requested by: Senators Kerr, Winner, Plexico, Conder, Representatives G. Wilson, Sherrill, Grady, Preston, Cummings

#### **NCSU FORESTRY GENETICIST FUNDS**

**Sec. 15.19.** Of the funds provided through receipts to the Board of Governors of The University of North Carolina the sum of one hundred fifty thousand dollars (\$150,000) for the 1995-96 fiscal year and the sum of one hundred fifty thousand dollars (\$150,000) for the 1996-97 fiscal year shall be used for North Carolina State University to establish and maintain a forestry geneticist position and support services dedicated to the development and use of the best genetic stock from the North Carolina Christmas tree industry. The purpose of this appropriation is to serve the Christmas tree industry in all regions of the State.

Requested by: Senators Plexico, Winner, Conder, Representatives Grady, Preston, Cummings

#### **UNC TELEVISION TOWER REPAIR FUNDS**

**Sec. 15.20.** Of the funds allocated to the Board of Governors of The University of North Carolina in Section 5.3 of Chapter 324 of the 1995 Session Laws for the 1995-96 fiscal year, at least five hundred thousand dollars (\$500,000) shall be used to repair the University of North Carolina television tower in Columbia.

Requested by: Representatives Grady, Preston, Cummings, Senators Plexico, Winner

#### **TECHNOLOGY TRAINING FUNDS TO SUPPORT EDUCATION**

**Sec. 15.21.** Of the funds provided to the Board of Governors of The University of North Carolina for expansion funding through receipts, the sum of one million five hundred thousand dollars (\$1,500,000) for computing and technology in 1995-96 shall be used for technology

equipment in schools of education to support technology training efforts in the public schools.

## PART 16. COMMUNITY COLLEGES

Requested by: Representatives Grady, Preston, Senators Winner, Plexico

### CONTINUING BUDGET CONCEPT MODIFIED

**Sec. 16.1.** The State Board of Community Colleges shall implement the continuing budget concept for the 1995-97 biennium and in subsequent years as follows:

- (1) Community colleges that experience a decline in enrollment shall not receive a decrease in full-time equivalent student (FTE) enrollment funds until their enrollment declines more than five percent (5%). At that time, they shall experience a decline of only the amount over five percent (5%);
- (2) Community colleges that experience an increase in enrollment shall not receive an increase in full-time equivalent student (FTE) enrollment funds until their enrollment increases more than three percent (3%). At that time, they shall experience an increase of only the amount over three percent (3%).

Requested by: Representatives Grady, Preston, Cummings, Senators Plexico, Winner, Conder

### FUNDS FOR "RETOOLING FOR THE YEAR 2000: GAINING THE COMPETITIVE EDGE"

**Sec. 16.3.** The funds appropriated in this act for the North Carolina Community College System shall be used to implement the provisions of G.S. 115D-8, "Retooling for the Year 2000: Gaining the Competitive Edge". These funds shall be for the following priorities in order to improve the ability of citizens to be competitive in the global economy:

- (1) Improve training programs in high job demand skill areas;
- (2) Enhance allied health programs, including nursing, physical, occupational, and respiratory therapy, and increase the number of trained students in these fields;
- (3) Provide more technology education in order to ensure that all students are technologically proficient in today's workplace. More infrastructure, equipment, and highly trained faculty will be needed in this area;
- (4) Increase short-term skill enhancement training through improved occupational extension training programs;
- (5) Provide funds for high cost programs;
- (6) Develop more "workplace literacy" programs at job sites in order to improve job security and advancement opportunities for workers;
- (7) Provide more customized training for existing industries through the expansion of Focused Industrial Training (FIT) Centers;
- (8) Improve opportunities for faculty to keep up-to-date with the latest technological changes in their fields by funding more professional development and return-to-industry programs; and

- (9) Enhance all associate degree programs and facilitate the transfer of students with associate degrees pursuing baccalaureate degrees.

The State Board of Community Colleges shall adopt the "Education Blueprint" in accordance with G.S. 115D-8 and shall continue to provide its "Critical Success Factors" document in order to provide the General Assembly with the accountability for the expenditure of funds for the "Retooling for the Year 2000" programs.

Requested by: Representatives Grady, Preston, Senators Plexico, Winner

#### **RECEIPT ADJUSTMENT**

**Sec. 16.4.** The Office of State Budget and Management and the Department of Community Colleges shall adjust annual tuition receipts for full-time equivalent students to reflect actual collections from the previous year, but shall not reduce the total requirements in their budget requests to the General Assembly.

The State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee on an annual basis on the cost of the tuition and fee exemptions established in G.S. 115D-5(b).

Requested by: Senators Perdue, Plexico, Winner, Conder, Representatives Grady, Preston, Cummings

#### **MISSION OF THE COMMUNITY COLLEGE SYSTEM**

**Sec. 16.7.** (a) The General Assembly hereby designates the North Carolina Community College System as the primary lead agency for delivering job training, literacy, and adult education programs in the State. The State Board of Community Colleges shall study the facility and equipment needs of the System in order to fulfill this role. In addition, the Community College System shall develop strategies for cooperating with other State agencies in the delivery of workforce preparedness services.

(b) The Governor shall direct all State agencies to compile an inventory of all State and federal funds in their budgets for workforce preparedness and to prepare a plan for cooperating with the Community College System in the delivery of these programs.

(c) The results of the studies, inventories, and plans listed in subsections (a) and (b) of this section shall be reviewed by the State Education Cabinet and reported to the Joint Legislative Education Oversight Committee by March 15, 1996.

(d) If the United States Congress consolidates workforce preparedness programs into a block grant, it is the intent of the General Assembly for the Community College System to be the primary provider of job training, literacy, and adult education programs and services.

(e) Nothing in this section shall affect the authority of the Governor to act as the grant recipient for the receipt of federal funds.

#### **PART 17. PUBLIC SCHOOLS**

Requested by: Representatives Grady, Preston, Cummings, Senators Winner, Plexico, Conder

#### **EXCEPTIONAL CHILDREN FUNDS**

**Sec. 17.** (a) The funds appropriated for exceptional children in Chapter 324 of the 1995 Session Laws shall be allocated as follows:

- (1) Each local school administrative unit shall receive for academically gifted children the sum of \$680.21 per child for three and nine-tenths percent (3.9%) of the 1994-95 actual average daily membership in the local school administrative unit, regardless of the number of children identified as academically gifted in the local school administrative unit. The total number of children for which funds shall be allocated pursuant to this subdivision is 44,609 for the 1995-96 school year.
- (2) Each local school administrative unit shall receive for exceptional children other than academically gifted children the sum of \$2,040.63 per child for the lesser of (i) all children who are identified as exceptional children other than academically gifted children or (ii) twelve and five-tenths percent (12.5%) of the 1994-95 actual average daily membership in the local school administrative unit. The maximum number of children for which funds shall be allocated pursuant to this subdivision is 131,642 for the 1995-96 school year.
- (3) Each local school administrative unit in which more than twelve and five-tenths percent (12.5%) of the 1994-95 actual average daily membership are identified as exceptional children other than academically gifted children shall receive \$427.35 per child in excess of the twelve and five-tenths percent (12.5%). These funds shall be used only for nonrecurring expenditures and other expenditures for exceptional children other than academically gifted children that do not impose future obligations on the State or local governments.

The dollar amounts allocated under this subsection for exceptional children shall also increase in accordance with legislative salary increments for personnel who serve exceptional children.

(b) The State Board of Education shall transfer part of these funds to a new allotment category for central office administrators, in accordance with the provisions of Chapter 450 of the 1995 Session Laws.

(c) The State Board of Education shall evaluate and review (i) the current process and criteria for designating students as children with special needs and (ii) the adequacy of State funding for children with special needs. The State Board shall report the results of its evaluation and review to the Joint Legislative Education Oversight Committee prior to March 15, 1996.

Requested by: Representatives Grady, Preston, Cummings, Senators Winner, Plexico, Conder

#### **SUPPLEMENTAL FUNDING IN LOW-WEALTH COUNTIES**

**Sec. 17.1.** (a) *Funds for supplemental funding.* -- The General Assembly finds that it is appropriate to provide supplemental funds in low-wealth counties to allow those counties to enhance the instructional program and student achievement; therefore, of the funds appropriated to Aid to Local School Administrative Units, the sum of forty-one million four hundred eighty-three thousand eight hundred nine dollars (\$41,483,809) for the

1995-96 fiscal year and the sum of (\$41,483,809) for the 1996-97 fiscal year shall be used for supplemental funds for schools.

(b) *Use of funds for supplemental funding.* -- Local school administrative units shall use funds received pursuant to this section only to provide instructional positions, instructional support positions, teacher assistant positions, clerical positions, instructional supplies and equipment, staff development, and textbooks: Provided, however, local school administrative units may also use up to ten percent (10%) of these funds for salary supplements for instructional personnel and instructional support personnel.

(c) *Definitions.* -- As used in this section:

- (1) "Anticipated county property tax revenue availability" means the county adjusted property tax base multiplied by the effective State average tax rate.
- (2) "Anticipated total county revenue availability" means the sum of the
  - a. Anticipated county property tax revenue availability,
  - b. Local sales and use taxes received by the county that are levied under Chapter 1096 of the 1967 Session Laws or under Subchapter VIII of Chapter 105 of the General Statutes,
  - c. Food stamp exemption reimbursement received by the county under G.S. 105-164.44C,
  - d. Homestead exemption reimbursement received by the county under G.S. 105-277.1A,
  - e. Inventory tax reimbursement received by the county under G.S. 105-275.1 and G.S. 105-277A,
  - f. Intangibles tax distribution and reimbursement received by the county under G.S. 105-213 and G.S. 105-213.1, and
  - g. Fines and forfeitures deposited in the county school fund for the most recent year for which data are available.
- (3) "Anticipated total county revenue availability per student" means the anticipated total county revenue availability for the county divided by the average daily membership of the county.
- (4) "Anticipated State average revenue availability per student" means the sum of all anticipated total county revenue availability divided by the average daily membership for the State.
- (5) "Average daily membership" means average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual, adopted by the State Board of Education. If a county contains only part of a local school administrative unit, the average daily membership of that county includes all students who reside within the county and attend that local school administrative unit.
- (6) "County adjusted property tax base" shall be computed as follows:
  - a. Subtract the present-use value of agricultural land, horticultural land, and forestland in the county, as defined in G.S. 105-277.2, from the total assessed real property valuation of the county.



- b. Adjust the resulting amount by multiplying by a weighted average of the three most recent annual sales assessment ratio studies.
  - c. Add to the resulting amount the:
    - 1. Present-use value of agricultural land, horticultural land, and forestland, as defined in G.S. 105-277.2.
    - 2. Value of property of public service companies, determined in accordance with Article 23 of Chapter 105 of the General Statutes, and
    - 3. Personal property value for the county.
- (7) "County adjusted property tax base per square mile" means the county adjusted property tax base divided by the number of square miles of land area in the county.
- (8) "County wealth as a percentage of State average wealth" shall be computed as follows:
- a. Compute the percentage that the county per capita income is of the State per capita income and weight the resulting percentage by a factor of five-tenths.
  - b. Compute the percentage that the anticipated total county revenue availability per student is of the anticipated State average revenue availability per student and weight the resulting percentage by a factor of four-tenths.
  - c. Compute the percentage that the county adjusted property tax base per square mile is of the State adjusted property tax base per square mile and weight the resulting percentage by a factor of one-tenth.
  - d. Add the three weighted percentages to derive the county wealth as a percentage of the State average wealth.
- (9) "Effective county tax rate" means the actual county tax rate multiplied by a weighted average of the three most recent annual sales assessment ratio studies.
- (10) "Effective State average tax rate" means the average of effective county tax rates for all counties.
- (10a) For the 1995-96 fiscal year, "local current expense funds" means the most recent county current expense appropriations to public schools, as reported by counties in the annual county financial information report to the State Treasurer. For the 1996-97 fiscal year, "local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.
- (11) "Per capita income" means the average for the most recent three years for which data are available of the per capita income according to the most recent report of the United States Department of Commerce, Bureau of Economic Analysis, including any reported modifications for prior years as outlined in the most recent report.

- (12) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).
- (13) For the 1995-96 fiscal year, "State average current expense appropriations per student" means the most recent State total of county current expense appropriations to public schools, as reported by counties in the annual county financial information report to the State Treasurer. For the 1996-97 fiscal year, "State average current expense appropriations per student" means the most recent State total of county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.
- (14) "State average adjusted property tax base per square mile" means the sum of the county adjusted property tax bases for all counties divided by the number of square miles of land area in the State.
- (14a) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.
- (15) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

(d) *Eligibility for funds.* -- Except as provided in subsection (h) of this section, the State Board of Education shall allocate these funds to local school administrative units located in whole or in part in counties in which the county wealth as a percentage of the State average wealth is less than one hundred percent (100%).

(e) *Allocation of funds.* -- Except as provided in subsection (g) of this section, the amount received per average daily membership for a county shall be the difference between the State average current expense appropriations per student and the current expense appropriations per student that the county could provide given the county's wealth and an average effort to fund public schools. (To derive the current expense appropriations per student that the county could be able to provide given the county's wealth and an average effort to fund public schools, multiply the county wealth as a percentage of State average wealth by the State average current expense appropriations per student.)

The funds for the local school administrative units located in whole or in part in the county shall be allocated to each local school administrative unit, located in whole or in part in the county, based on the average daily membership of the county's students in the school units.

If the funds appropriated for supplemental funding are not adequate to fund the formula fully, each local school administrative unit shall receive a pro rata share of the funds appropriated for supplemental funding.

(f) *Formula for distribution of supplemental funding pursuant to this section only.* -- The formula in this section is solely a basis for distribution of supplemental funding for low-wealth counties and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for low-wealth counties.

(g) *Minimum effort required.* -- A county that (i) maintains an effective county tax rate that is at least one hundred percent (100%) of the effective State average tax rate in the most recent year for which data are available or (ii) maintains a county appropriation per student to the school local current expense fund of at least one hundred percent (100%) of the current expense appropriations per student to the school local current expense fund that the county could provide given the county's wealth and an average effort to fund public schools, shall receive full funding under this section. A county that maintains a county appropriation per student to the school local current expense fund of less than one hundred percent (100%) of the current expense appropriations per student to the school local current expense fund that the county could provide given the county's wealth and an average effort to fund public schools shall receive funding under this section at the same percentage that the county's appropriation per student to the school local current expense fund is of the current expense appropriations per student to the school local current expense fund that the county could provide given the county's wealth and an average effort to fund public schools.

(h) *Nonsupplant requirement.* -- A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 1995-97 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

- (1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and
- (2) The county cannot show (i) that it has remedied the deficiency in funding, or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section.

The State Board of Education shall adopt rules to implement this section.

(i) *Reports.* -- The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 1996, on its analysis of whether counties supplanted funds.

(j) *Department of Revenue reports.* -- The Department of Revenue shall provide to the Department of Public Instruction a preliminary report for the current fiscal year of the assessed value of the property tax base for each county prior to March 1 of each year and a final report prior to May 1 of each year. The reports shall include for each county the annual sales assessment ratio and the taxable values of (i) total real property, (ii) the portion of total real property represented by the present-use value of agricultural land, horticultural land, and forestland as defined in G.S. 105-277.2, (iii) property of public service companies determined in accordance with Article 23 of Chapter 105 of the General Statutes, and (iv) personal property.

Requested by: Representatives Grady, Preston, Cummings. Senators Winner, Plexico, Conder

### **SMALL SCHOOL SYSTEM SUPPLEMENTAL FUNDING**

**Sec. 17.2.** (a) *Funds for small school systems.* -- Except as provided in subsection (b) of this section, the State Board of Education shall allocate funds appropriated for small school system supplemental funding (i) to each county school administrative unit with an average daily membership of less than 3,150 students and (ii) to each county school administrative unit with an average daily membership of from 3,150 to 4,000 students if the county in which the local school administrative unit is located has a county adjusted property tax base per student that is below the State adjusted property tax base per student and if the total average daily membership of all local school administrative units located within the county is from 3,150 to 4,000 students. The allocation formula shall:

- (1) Round all fractions of positions to the next whole position.
- (2) Provide five and one-half additional regular classroom teachers in counties in which the average daily membership per square mile is greater than four and seven additional regular classroom teachers in counties in which the average daily membership per square mile is four or less.
- (3) Provide additional program enhancement teachers adequate to offer the standard course of study.
- (4) Change the duty-free period allocation to one teacher assistant per 400 average daily membership.
- (5) Provide a base for the consolidated funds allotment of at least one hundred fifty thousand dollars (\$150,000), excluding textbooks.
- (6) Allot vocational education funds for grade 6 as well as for grades 7-12.

If funds appropriated for each fiscal year for small school system supplemental funding are not adequate to fund fully the program, the State Board of Education shall reduce the amount allocated to each county school administrative unit on a pro rata basis. This formula is solely a basis for distribution of supplemental funding for certain county school administrative units and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for such county administrative units.

(b) *Nonsupplant requirement.* -- A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 1995-97 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

- (1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and
- (2) The county cannot show (i) that it has remedied the deficiency in funding, or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section.

The State Board of Education shall adopt rules to implement this section.

(c) *Phase-out provision.* -- If a local school administrative unit becomes ineligible for funding under this formula solely because of an increase in population or an increase in the county adjusted property tax base per student of the county in which the local school administrative unit is located, funding for that unit shall be phased-out over a two year period. For the first year of ineligibility, the unit shall receive the same amount it received for the prior fiscal year. For the second year of ineligibility, it shall receive half of that amount.

(d) *Definitions.* -- As used in this section:

- (1) "Average daily membership" means within two percent (2%) of the average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual, adopted by the State Board of Education.
- (2) "County adjusted property tax base per student" means the total assessed property valuation for each county, adjusted using a weighted average of the three most recent annual sales assessment ratio studies, divided by the total number of students in average daily membership who reside within the county.
- (2a) For the 1995-96 fiscal year, "local current expense funds" means the most recent county current expense appropriations to public schools, as reported by counties in the annual county financial information report to the State Treasurer. For the 1996-97 fiscal year, "local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.
- (3) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).



- (4) "State adjusted property tax base per student" means the sum of all county adjusted property tax bases divided by the total number of students in average daily membership who reside within the State.
- (4a) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.
- (5) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

(e) *Reports.* -- The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 1996, on the results of its analysis of whether counties supplanted funds.

Requested by: Senators Winner, Plexico, Conder. Representatives Grady, Preston, Cummings

#### **SCHOOL TECHNOLOGY RESERVE**

**Sec. 17.3.** The funds in the amount of forty-two million dollars (\$42,000,000) appropriated for the 1994-95 fiscal year to the Office of State Budget and Management, School Technology Reserve, are transferred to the State Board of Education, State School Technology Fund. These funds shall be allocated by the State Board of Education to the credit of local school administrative units as follows:

- (1) Ten percent (10%) of these funds shall be allocated in accordance with the low-wealth county supplemental school funding formula set out in Section 138 of Chapter 321 of the 1993 Session Laws, as rewritten by Section 19.32 of Chapter 769 of the 1993 Session Laws; and
- (2) Ninety percent (90%) of these funds shall be allocated on the basis of average daily membership: Provided, however, the State Board shall use part of these funds, as necessary, to ensure that the sum total of the allocations to all of the local school administrative units located within each county is at least \$50,000.

Before a local school technology plan is approved by the State Board of Education, a local board of education may use up to ten percent (10%) of the funds credited to it in the Fund to develop its local school technology plan or, to the extent that these funds are not needed to develop the local school technology plan, for staff development to improve the use of instructional technology. After a local school technology plan is reviewed by the Department of Public Instruction and the Information Resources Management Commission and approved by the State Board of Education, a local

board of education may use the remainder of these funds for nonpersonnel expenses to implement its local school technology plan, including staff development, hardware, software, networks, maintenance contracts, and school facility modifications necessary for the installation of equipment.

Two or more local school administrative units may jointly expend funds to develop their individual local school technology plans, for staff development, or to implement their individual local school technology plans.

Requested by: Representatives Grady, Preston, Cummings, Senators Winner, Plexico, Conder

#### **LITIGATION RESERVE**

**Sec. 17.4.** (a) Funds appropriated to the Department of Public Instruction for the 1994-95 fiscal year for the Litigation Reserve that are not expended or encumbered on June 30, 1995, are transferred to the State Board of Education. These funds shall not revert on July 1, 1995, but shall remain available for expenditure until June 30, 1997.

(b) The State Board of Education may expend up to five hundred thousand dollars (\$500,000) for the 1995-96 fiscal year from unexpended funds for certified employees' salaries to pay expenses related to pending litigation.

(c) Subsection (a) of this section becomes effective June 30, 1995.

Requested by: Representatives Grady, Preston, Senators Winner, Plexico

#### **EDUCATION EXPENDITURE REPORT DUE DATE**

**Sec. 17.5.** G.S. 105-503(b) reads as rewritten:

"(b) On or before ~~February 15~~ May 1 of each year the Local Government Commission shall furnish to the General Assembly a report of the level of each county's appropriations for public school capital outlay (including retirement of indebtedness incurred and monies reserved for these purposes), include the amount each county has provided for public school capital outlay for a period including at a minimum the most recent five fiscal years, estimates of public school facility needs, the proportion of revenue from taxes collected under Article 40 of this Chapter that has been provided for public school capital outlay purposes (including retirement of indebtedness incurred and monies reserved for these purposes), the proportion of revenue collected under this Article that has been expended for a public school capital outlay purposes (including retirement of indebtedness incurred and monies reserved for these purposes), and any other factors it deems relevant to carrying out the intent stated in subsection (a) of this section."

Requested by: Representatives Grady, Preston, Senators Winner, Plexico

#### **ELIMINATION OF OBSOLETE REPORTS ON MAINTENANCE CONTRACTS; EXCHANGE OF INFORMATION WITHIN STATE EDUCATION AGENCIES**

**Sec. 17.6.** (a) Section 38(b) of Chapter 500 of the 1989 Session Laws is repealed.

(b) Section 6 of Chapter 880 of the 1991 Session Laws reads as rewritten:

"Sec. 6. A joint report of progress made to develop a system to provide an exchange of information shall be made to the Joint Legislative Education Oversight Committee no later than February 15, ~~1993, and annually thereafter, 1996.~~"

Requested by: Representatives Grady, Preston, Cummings, Senators Winner, Plexico, Conder

### **EXPANSION BUDGET APPROPRIATIONS OF SAVINGS FROM THE REORGANIZATION OF THE DEPARTMENT OF PUBLIC INSTRUCTION**

**Sec. 17.7.** Of the funds appropriated to State Aid to Local School Administrative Units, the State Board of Education shall allocate the sum of nine million three hundred eighteen thousand four hundred thirty-six dollars (\$9,318,436) for the 1995-96 fiscal year and the sum of ten million six hundred sixty-five thousand two hundred twenty dollars (\$10,665,220) for the 1996-97 fiscal year to local school administrative units. Of these funds:

- (1) The sum of \$3,000,000 for the 1995-96 fiscal year and the sum of \$3,000,000 for the 1996-97 fiscal year shall be used for textbooks;
- (2) The sum of \$6,318,436 for the 1995-96 fiscal year and the sum of \$7,665,220 for the 1996-97 fiscal year shall be used to reduce the funded allotment ratio to one teacher for every 23 students in first grade.

Requested by: Senators Winner, Plexico, Conder, Representatives Grady, Preston, Cummings

### **MODIFICATION OF TRANSFER FUNDS FOR TACS TO LOCAL SCHOOL ADMINISTRATIVE UNITS**

**Sec. 17.8.** Section 17.7 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 17.7. Effective July 1, 1996, the State Board of Education shall reallocate funds from Technical Assistance Centers to local school administrative units in accordance with a formula adopted by the State ~~Board.~~ Board: Provided, however, if all of the local school administrative units in the service area of a Technical Assistance Center agree on a plan for use of funds allocated to that Technical Assistance Center, the State Board of Education may reallocate the funds for that Technical Assistance Center on such earlier date as the State Board of Education may determine is appropriate. Local boards of education may use these funds to contract with Technical Assistance Centers, contract with other entities, hire personnel, or otherwise acquire staff development, training, planning, and other forms of technical assistance.

The Technical Assistance Centers shall remain a part of the Department of Public Instruction but shall be funded solely by receipts from local boards of education and from other non-State sources. If no such funds are available for a Technical Assistance Center, that Center shall be abolished or consolidated with another Center by the State Board. The State Board shall establish a management structure for the Technical Assistance Centers that

enables superintendents, principals, and teachers from the local school administrative units to be served by the Centers to have input into the priorities and personnel decisions at the Centers."

Requested by: Representatives Grady, Preston, Cummings, Senators Winner, Plexico, Conder

### ALTERNATIVE LEARNING PROGRAMS

**Sec. 17.9.** (a) G.S. 115C-238.41(c)(3)d. reads as rewritten:

"d. Alternative Learning Program Model. -- An Alternative Learning Program is a program that provides serves students at any level, serves suspended or expelled students, serves students whose learning styles are better served in an alternative program, or is designed to use multiple strategies, which serve students in the standard classroom or provide individualized programs outside of a standard classroom setting in a caring atmosphere in which students learn the skills necessary to redirect their lives and return to a standard classroom setting. The A program should maintain State standards and may include smaller classes and lower student/teacher ratios, school-to-work transition activities, modification of curriculum and instruction to meet individual needs, flexible scheduling, and necessary academic, vocational, and support services for students and their families. A program also may be provided under contract with a local, private, nonprofit 501(c)(3) corporation. Services may also may include appropriate measures to correct disruptive behavior, teach responsibility, good citizenship, and respect for rules and authority.

An alternative learning program should have a well-defined mission, offer appropriate educational opportunities, and hold high expectations for staff and students. The goals of the program should target The goals of the alternative school programs should be to (i) reduce the school dropout rate reducing school dropout rates through improved student attendance, behavior, and educational achievement; and (ii) achievement. When appropriate, programs should increase successful school-to-work transitions for students through educationally linked job internships, mentored job shadowing experiences, and the development of personalized education and career plans for participating students."

(b) G.S. 115C-238.41(c) is amended by adding a new subdivision to read:

"(8) The process to be followed if students may be referred and placed on an involuntary basis into alternative learning programs in connection with suspension or expulsion. This process shall be based on model guidelines developed by the State Board of Education."

(c) G.S. 115C-238.43 reads as rewritten:

"§ 115C-238.43. *Award of grants.*

(a) In selecting grant recipients, the State Board shall consider (i) the recommendations of the Superintendent, (ii) the geographic location of the applicants, and (iii) the demographic profile of the applicants. After considering these factors, the State Board shall give priority to grant applications that will serve areas that have a high incidence of juvenile crime and that propose different approaches that can serve as models for other communities.

The State Board shall select the grant recipients prior to July 15, 1994, for local programs that will be in operation at the beginning of the 1994-95 school year. The State Board shall select the grant recipients prior to October 1, 1994, for local programs that will be in operation after the beginning of the 1994-95 school year.

(b) Notwithstanding subsection (a) of this section, in awarding grants for alternative learning programs for the 1995-96 school year, the State Board shall give preference to local school administrative units with low numbers of alternative learning programs relative to average daily membership or high incidences of juvenile crime."

(d) G.S. 115C-238.47 reads as rewritten:

"§ 115C-238.47. *Program evaluation: reporting requirements.*

(a) ~~The Department of Public Instruction~~ State Board of Education shall develop and implement an evaluation ~~system, under the direction of the State Board of Education,~~ system that will assess the efficiency and effectiveness of the Intervention/Prevention Grant Program. ~~The Department~~ State Board shall design this system to:

- (1) Provide information to local program administrators and teachers, ~~the Department~~ State Board, and to the General Assembly on how to improve and refine the programs;
- (2) Enable local program administrators and teachers, the Department State Board, and the General Assembly to assess the overall quality, efficiency, and impact of the existing programs;
- (3) Enable the ~~Department~~ State Board and the General Assembly to determine whether to modify the Intervention/Prevention Grant Program; and
- (4) Provide a detailed fiscal analysis of how State funds for these programs were ~~used,~~ used; and
- (5) Evaluate over a five-year period, beginning with the 1995-96 school year, the success of, the quality of educational opportunities that are offered in, and the effectiveness of alternative learning programs in the public schools.

(a) Before its annual report on February 15, 1996, and annually thereafter, the Board shall provide an opportunity for local program administrators, and particularly alternative learning program administrators and educators, to comment on the evaluation system. The Board shall consider these comments in any proposed modification to the system.

(b) The State Board of Education shall report to the General Assembly and the Joint Legislative Education Oversight Committee by May 15, 1994, on its progress in developing the evaluation system and in developing and implementing the program. It shall report prior to February 1, 1995, on the evaluation system ~~developed by the Department~~ and on program



implementation. The State Board of Education shall present an annual report on October 1, 1995, February 15, 1996, and annually thereafter to the General Assembly and to the Joint Legislative Education Oversight Committee on (i) the implementation of the program, (ii) the results of the program evaluation, (iii) how the funds appropriated by the General Assembly for the program are being used, (iv) additional funds required to implement the program, and (v) any necessary modifications to the program, program, and (vi) comments received from local program administrators, and particularly alternative learning program administrators and educators, concerning the evaluation system and the program generally."

(e) The State Board of Education shall convene an Alternative Educators Planning Group of up to 15 outstanding practicing alternative school educators so that they may define the needs for technical assistance and training for alternative school educators and determine how to best meet those needs. The educators shall represent the geographic, racial, and gender diversity of the State and shall include administrators, teachers, and counselors. The State Board shall solicit the recommendations of alternative school educators to determine the membership of the group. The educators shall elect a chairperson from among the group and shall determine a meeting schedule to suit their needs. The State Board shall provide meeting space and clerical assistance. The Planning Group shall report the plan for service to the State Board of Education and the Joint Legislative Education Oversight Committee no later than February 1, 1996, at which time the Planning Group shall terminate, though nothing in this act shall prevent the group from continuing to meet on a voluntary basis. Members of the Alternative Educators Planning Group shall receive per diem, subsistence, and travel allowances in accordance with G.S. 138-5 or G.S. 138-6, as appropriate.

Based on the technical assistance and training needs identified by the Alternative Educators Planning Group, the State Board of Education shall coordinate the efforts of its specialists and, to the extent possible, of specialists in other public and private agencies to provide coordinated assistance to alternative learning programs in local school administrative units. The specialists should include, but are not limited to, those in the areas of dropout prevention, drug abuse prevention, in-school suspension, and children with special needs.

(f) The State Board of Education shall study the issue of referral and placement of students into alternative learning programs and shall develop model guidelines that local school administrative units may use for the referral and placement of students into alternative learning programs. In developing these guidelines, the Board shall consider the different methods of referral, whether placement in the programs is voluntary or mandatory, and any due process or other legal issues that may apply. In developing these guidelines, the Board shall consult with the Alternative Educators Planning Group created in subsection (e) of this section, shall solicit comments from other alternative school educators in the State, and may consult with representatives of the North Carolina School Boards Association and other professional education organizations. The Board shall develop and disseminate the model guidelines to local school boards no later than

February 1, 1996. The local school boards shall then disseminate these guidelines to their alternative learning programs.

(g) The funds appropriated in this act for the 1995-96 fiscal year to State Aid to Local School Administrative Units for alternative learning programs shall be used for start-up costs for new or expanded programs to implement alternative learning programs. These funds shall be available to a local school administrative unit for one year only.

Of these funds, up to two hundred thousand dollars (\$200,000) may be used by the State Board of Education to implement this section, including the evaluation of alternative learning programs.

(h) The funds appropriated in this act for the 1996-97 fiscal year to State Aid to Local School Administrative Units for alternative learning programs shall be used by the State Board to increase the Alternative Schools/At-Risk Student Allotment.

Of these funds, up to two hundred thousand dollars (\$200,000) may be used by the State Board of Education to implement this section, including the evaluation of alternative learning programs.

(i) The State Board of Education, working with local school administrative units, shall develop a plan to provide access to alternative schools for secondary students in all local school administrative units. In developing the plan, the State Board shall consider redirecting existing funds for dropout prevention, including federal funds, intervention/prevention grant funds, and other State funds.

Requested by: Senators Winner, Plexico, Conder, Representatives Grady, Preston, Cummings

#### **SCHOOL-BASED INCENTIVE AWARD FUNDS**

**Sec. 17.10.** (a) The State Board of Education shall use funds appropriated for the 1995-96 fiscal year for school-based awards to establish a school-based incentive award pilot program in up to 10 local school administrative units. The State Board of Education may include all or part of the schools in a local school administrative unit.

(b) The State Board shall set goals for individual schools in local school administrative units participating in the pilot program. Individual schools that exceed those goals shall receive incentive grants in amounts set by the State Board.

A school may use these incentive funds in accordance with a plan that has been:

- (1) Developed by the school improvement team;
- (2) Submitted to the principal, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to that school for their review and vote in the same manner that a school improvement plan is approved under G.S. 115C-238.3(b1); and
- (3) Approved by the local board of education.

The local board of education shall approve the plan developed by the school unless the plan involves expenditures of funds that are not for a public purpose or that are otherwise unlawful.

(c) The State Board of Education shall report plans for expanding the School-Based Award Program on a statewide basis to the Joint Legislative Education Oversight Committee by January 15, 1996.

Requested by: Representatives Grady, Preston, Cummings, Senators Winner, Plexico, Conder

### **FUNDS FOR NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS**

**Sec. 17.11.** The National Board for Professional Teaching Standards (NBPTS) was established in 1987 as an independent, nonprofit organization to establish high standards for teachers' knowledge and performance and for development and operation of a national voluntary system to assess and certify teachers who meet those standards. In order to apply for the NBPTS certification process, teachers must have three years or more of teaching experience, be currently teaching, have graduated from an accredited college or university, and hold a valid State teaching license. Upon successful completion of a year-long process of developing a portfolio of student work and videotapes of teaching/learning activities for NBPTS review and then participating in NBPTS assessment center simulation exercises, including performance-based activities and a content knowledge examination, teachers may become NBPTS-certified.

Of the funds appropriated to the Department of Public Instruction in this act, the sum of:

- (1) Two hundred thirty thousand seven hundred seventy-six dollars (\$230,776) for the 1995-96 fiscal year shall be used to pay for the National Board for Professional Teaching Standards (NBPTS) participation fee and for up to three days of approved paid leave for teachers participating in the NBPTS program during the 1995-96 school year for State-paid teachers who (i) have completed three years of teaching in North Carolina schools operated by local boards of education, the Department of Human Resources, the Department of Correction, or The University of North Carolina, or affiliated with The University of North Carolina, prior to application for NBPTS certification, and (ii) who have not previously received State funds for participating in any certification area in the NBPTS program. Teachers participating in the program shall take paid leave only with the approval of their supervisors.

A teacher for whom the State pays the participation fee (i) who does not complete the process or (ii) who completes the process but does not teach in a North Carolina public school for at least one year after completing the process, shall repay the certification fee to the State. Repayment is not required if the process is not completed or the teacher fails to teach for one year due to the death or disability of the teacher or other extenuating circumstances as may be recognized by the State Board.

- (2) Two hundred forty-five thousand five hundred eighty-two dollars (\$245,582) shall be used for an annual bonus of four percent (4%) of the teacher's State-paid salary for the 10-month school

year for State-paid teachers who (i) completed three years of teaching in North Carolina schools operated by local boards of education, the Department of Human Resources, the Department of Correction, or The University of North Carolina prior to application for NBPTS certification and (ii) complete the NBPTS certification process. The bonus for each fiscal year shall be paid at the end of each full school year that the teacher teaches full time in a North Carolina school operated by local boards of education, the Department of Human Resources, the Department of Correction, or The University of North Carolina. Teachers shall continue this bonus only as long as they retain NBPTS certification.

Requested by: Senators Winner, Plexico, Conder, Representatives Grady, Preston, Cummings

#### **FUNDS TO REDUCE CLASS SIZE IN GRADE 1**

**Sec. 17.12.** The funds appropriated in this act to reduce class size in first grade shall be allocated by the State Board of Education to local school administrative units on the basis of one teacher for every 23 students in first grade. Local school administrative units shall use these funds (i) to reduce class size in first grade to 23 or fewer students or (ii) to hire reading teachers within kindergarten through third grade or otherwise reduce the student-teacher ratio within kindergarten through third grade.

For the purpose of calculating the maximum allowable class size for first grade, the ratio of teachers to students shall be 1 to 26.

Requested by: Senators Albertson, Winner, Plexico, Conder, Representatives Grady, Preston, Cummings

#### **TEACHER VACATION LEAVE FOR ADOPTIVE PARENTS**

**Sec. 17.13.** G.S. 115C-302 is amended by adding a new subsection to read:

"(f) A teacher may use annual leave, personal leave, or leave without pay to care for a newborn child or for a child placed with the teacher for adoption or foster care. The leave may be for consecutive workdays during the first 12 months after the date of birth or placement of the child, unless the teacher and local board of education agree otherwise.

The total of all such leave time shall be no more than 12 weeks."

Requested by: Senators Perdue, Plexico, Winner, Conder, Representatives Grady, Preston, Cummings

#### **CONTINUE MORATORIUM ALGEBRA I RULE**

**Sec. 17.14.** Section 3 of Chapter 371 of the 1995 Session Laws reads as rewritten:

"Sec. 3. This act is effective upon ~~ratification, and expires on June 30, 1997, ratification.~~"

Requested by: Representatives Grady, Preston, Cummings, Senators Perdue, Ballance, Winner, Plexico, Conder

#### **RESERVE FOR EDUCATION PURPOSES/USES OF FUNDS**

**Sec. 17.15.** The Director of the Budget shall allocate funds transferred to the Reserve for Education Purposes pursuant to Section 27.10A1 of this act as follows:

- (1) Two-thirds of the funds shall be allocated to the State Board of Education. These funds shall be allocated by the State Board of Education to the credit of local school administrative units for textbooks and the State School Technology Fund.
- (2) One-third of the funds shall be allocated to the Department of Community Colleges. The State Board of Community Colleges shall allocate these funds to community colleges for equipment and technology.

Requested by: Senators Perdue, Winner, Plexico, Conder, Representatives Grady, Preston, Cummings

#### **PUBLIC SCHOOL PLAN**

**Sec. 17.16.** The State Board of Education shall develop a plan to coordinate its vocational and technical education and job-training efforts with the Community College System. The plan shall include a review of the public schools' facility and equipment needs specifically related to vocational and technical education and job training and an outline of necessary modifications to existing public school policies. The State Board shall submit the results of its study for review to the State Education Cabinet. After that review, the State Board shall report the results of its study to the Joint Legislative Education Oversight Committee by December 1, 1996.

Requested by: Representatives Grady, Preston, Cummings, Senators Winner, Plexico, Conder

#### **SCHOOL TRANSPORTATION FORMULA**

**Sec. 17.17.** Of the funds appropriated to Aid to Local School Administrative Units for the 1995-96 fiscal year for public school transportation, the State Board of Education may use up to two hundred fifty thousand dollars (\$250,000) to review the formula used to allocate funds for public school transportation and to assist local school administrative units in improving the efficiency of their transportation systems.

### **PART 18. DEPARTMENT OF TRANSPORTATION**

Requested by: Representatives Barbee, Bowie, Culpepper, Senator Hoyle

#### **NORTHEASTERN REGIONAL AIRPORT MATCHING FUNDS**

**Sec. 18.** Of the funds appropriated in the Continuation Budget Operations Appropriations Act of 1995 to the Department of Commerce for allocation to the Northeast North Carolina Regional Economic Development Commission, the sum of one hundred twenty-five thousand dollars (\$125,000) in each fiscal year shall be transferred to the Department of Transportation for allocation as a local match for projects at the Northeastern Regional Airport in Edenton.

Funds used as a local match shall be used for projects that have been approved by the Northeastern Regional Airport Commission and have been



included in the transportation improvement plan adopted by the Board of Transportation.

The State-local fund matching limitations contained in Article 7 of Chapter 63 of the General Statutes shall not apply to the State funds used as a local match pursuant to this section.

Requested by: Representatives Barbee, Bowie, Senator Hoyle  
**JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE  
TO STUDY LIENS ON TOWED AND STORED VEHICLES**

**Sec. 18.1.** The Joint Legislative Transportation Oversight Committee shall study the enforcement of liens on motor vehicles that have been towed and stored, including the following issues:

- (1) Whether the time period after which a lien can be satisfied on a motor vehicle for unpaid repair, towing, or storing charges should be shortened, and whether any other time periods relating to liens on towed and stored motor vehicles should be shortened;
- (2) Whether the amount of time that a vehicle can be left on the property of another person, including a business engaged in automobile repair, towing, or storage, before that vehicle is considered to be abandoned should be shortened;
- (3) Whether the cost of towing should be included in the amount of a lien;
- (4) Whether new procedures should be established for disposal of low-value vehicles to satisfy liens;
- (5) Whether the last registered owner of an abandoned vehicle that has been towed and stored should be charged with a traffic offense, should be liable for any restitution, or should be penalized in any other manner; and
- (6) Other issues related to the towing and storage of motor vehicles and liens on those vehicles.

The Joint Legislative Transportation Oversight Committee shall report the results of this study, including any legislative recommendations, to the 1995 General Assembly, Regular Session 1996.

Requested by: Representatives Barbee, Bowie, Sherrill, Senator Hoyle  
**DEPARTMENT OF TRANSPORTATION TO PROVIDE  
CONSTRUCTION AND MAINTENANCE SERVICES AT THE  
GOVERNOR'S WESTERN RESIDENCE**

**Sec. 18.2.** G.S. 136-18(13) reads as rewritten:

- "(13) The Department of Transportation ~~is authorized and empowered to~~ may construct and maintain all walkways and driveways within the Mansion Square in the City of Raleigh and the Western Residence of the Governor in the City of Asheville including the approaches connecting with the city streets, and any funds expended therefor shall be a charge against general maintenance."

Requested by: Senators Hoyle, Edwards, Representatives Barbee, Bowie, Crawford

**PURCHASE OF CENTURY CENTER CAMPUS FACILITY**

**Sec. 18.3.** Revenue collected into the Highway Trust Fund in excess of the certified budget for the fiscal year ending June 30, 1995, may be reserved and used, to the extent necessary, by the Department of Transportation to acquire the capital facility known as the Century Center Campus.

Requested by: Senators Hoyle, Edwards, Representatives Barbee, Bowie, Sherrill, Crawford

**JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE TO STUDY DIVISION OF MOTOR VEHICLES WAKE COUNTY SERVICE FACILITY**

**Sec. 18.4.** The Joint Legislative Transportation Oversight Committee may study a Division of Motor Vehicles Campus in Wake County, including a Customer Service Facility. The Committee may consider:

- (1) The need for a new DMV facility in Wake County;
- (2) The location and design of any proposed DMV Campus;
- (3) The phased construction and total life-cycle cost of any DMV Campus;
- (4) The renovation, replacement, or subsequent use of the existing DMV structures on New Bern Avenue; and
- (5) Other matters relating to Division of Motor Vehicles offices and services in Wake County.

The Department of Transportation, the State Construction Office, the Capital Planning Commission, and other State agencies shall assist the Joint Legislative Transportation Oversight Committee in conducting any study of these matters.

The Joint Legislative Transportation Oversight Committee may report its findings on this matter to the 1995 General Assembly, Regular Session 1996.

Requested by: Representatives Barbee, Bowie, Sherrill, Crawford, Senators Hoyle, Edwards

**SMALL URBAN CONSTRUCTION PROGRAM FUNDS INCREASED**

**Sec. 18.5.** Section 18.12 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 18.12. Of the funds appropriated in this act to the Department of ~~Transportation~~, Transportation:

- (1) ~~fourteen~~ Fourteen million dollars (\$14,000,000) shall be allocated in each fiscal year for small urban construction projects. These funds shall be allocated equally in each fiscal year of the biennium among the 14 Highway Divisions for the small urban construction program for small urban construction projects that are located within the area covered by a one-mile radius of the municipal corporate limits.
- (2) ~~Discretionary funds of six~~ Nine million dollars ~~(\$6,000,000)~~ (\$9,000,000) shall be used statewide for rural or small urban highway improvements ~~improvements~~, industrial access roads, and

spot-safety projects as approved by the Secretary of the Department of Transportation.

None of these funds used for rural secondary road construction are subject to the county allocation formula as provided in G.S. 136-44.5.

The Department of Transportation shall report to the members of the General Assembly on projects funded pursuant to this section in each member's district prior to the Board of Transportation's action. The Department shall make a quarterly comprehensive report on the use of these funds to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division."

Requested by: Representatives McLaughlin, Barbee, Bowie, Crawford, Senators Hoyle, Edwards

#### **DEPARTMENT OF TRANSPORTATION MAY USE CERTAIN SALARY FUNDS FOR DIVISION OF MOTOR VEHICLE CLASSIFICATIONS**

**Sec. 18.13.** Notwithstanding any other provision of law, the Department of Transportation may use the funds appropriated in Section 3 of Chapter 324 of the 1995 Session Laws for a Reserve of Salary Adjustments and any additional available salary funds for the following Division of Motor Vehicles reclassifications, that were reclassified as a result of the Officer Support Services Occupational Group Study mandated by the Office of State Personnel: Customer Service Representatives Classifications, Traffic Records Clerical Staff, and International Registration Plan positions.

Requested by: Representatives Barbee, Bowie, Crawford, Senators Hoyle, Edwards

#### **ORGANIZATIONAL AND BUSINESS PRACTICES STUDY OF THE DIVISION OF MOTOR VEHICLES**

**Sec. 18.14.** (a) The Joint Legislative Commission on Governmental Operations shall conduct a study of the Division of Motor Vehicles.

The study may include an assessment and recommendations for change of the Division's statutory responsibilities and functions, organizational structure, processes, and business practices.

The Joint Legislative Commission on Governmental Operations may enter into a contract with a private consulting firm to conduct this study. The Department of Transportation shall be consulted in the preparation of the request for proposal for consultant services.

The Joint Legislative Commission on Governmental Operations shall report its findings and recommendations based on this study to the 1995 General Assembly, Regular Session 1996.

(b) Of the funds appropriated from the Highway Fund to the Legislative Services Commission in this act the sum of two hundred thousand dollars (\$200,000) for the 1995-96 fiscal year shall be used to fund the study of the Division of Motor Vehicles by the Joint Legislative Commission on Governmental Operations authorized by subsection (a) of this section.

No new positions may be added, or programs expanded, in the Division of Motor Vehicles until the study is completed and the General Assembly has acted upon the study recommendations.

Requested by: Senators Hoyle, Edwards, Representatives Barbee, Bowie, Crawford

### **INCREASE ALLOCATION TO WILDLIFE RESOURCES COMMISSION**

**Sec. 18.16.** G.S. 105-449.126, as enacted by Chapter 390 of the 1995 Session Laws, reads as rewritten:

*"§ 105-449.126. Distribution of part of Highway Fund allocation to Wildlife Resources Fund.*

The Secretary shall credit to the Wildlife Resources Fund one-sixth of one percent (1/6 of 1%) of the amount that is allocated to the Highway Fund under G.S. 105-449.125 and is from the excise tax on ~~gasoline or blended fuel that contains gasoline~~, motor fuel. Revenue credited to the Wildlife Resources Fund under this section may be used only for the boating and water safety activities described in G.S. 75A-3(c). The Secretary must credit revenue to the Wildlife Resources Fund on an annual basis."

Requested by: Senators Hoyle, Edwards, Representatives Barbee, Bowie, Crawford

### **VISITOR CENTER OPERATIONAL FUNDS**

**Sec. 18.17.** (a) G.S. 20-79.7(c)(2), as rewritten by Section 18.7 of Chapter 324 of the 1995 Session Laws, reads as rewritten:

"(2) From the funds remaining in the Special Registration Plate Account after the deductions in accordance with subdivision (1) of this subsection, there is appropriated from the Special Registration Plate Account the sum of ~~four hundred fifty thousand dollars (\$450,000)~~ five hundred twenty-five thousand dollars (\$525,000) for the 1995-96 fiscal year to provide operating assistance for the Visitor and Welcome Centers:

- a. on U.S. Highway 17 in Camden County. (\$75,000);
- b. on U.S. Highway 17 in Brunswick County. (\$75,000);
- c. on U.S. Highway 441 in Macon County. (\$75,000);
- d. in the Town of Boone, Watauga County. (\$75,000);
- e. on U.S. Highway 29 in Caswell County. (\$75,000); ~~and~~
- f. on U.S. Highway 70 in Carteret County. (\$75,000); ~~and~~
- g. on U.S. Highway 64 in Tyrrell County. (\$75,000)."

(b) The Department of Transportation shall pay the funds appropriated in subsection (a) of this section for operating assistance for the Visitor and Welcome Center in Tyrrell County to Partnership for the Sounds, Inc.

Requested by: Senators Hoyle, Edwards, Representatives Barbee, Bowie, Crawford

### **BRANCH AGENT TRANSACTION RATE**

**Sec. 18.18.** Section 155 of the 1993 Session Laws, as amended by Section 20.1 of Chapter 769 of the 1993 Session Laws, reads as rewritten:

"Sec. 155. The Division of Motor Vehicles of the Department of Transportation shall compensate a contractor with whom it has a contract under G.S. 20-63(h) at the rate of ~~one dollar (\$1.00)~~ one dollar and twenty cents (\$1.20) for each transaction performed in accordance with the requirements set by the Division. A transaction is any of the following activities:

- (1) Issuance of a registration plate, a registration card, a registration renewal sticker, or a certificate of title.
- (2) Issuance of a handicapped placard or handicapped identification card.
- (3) Acceptance of an application for a personalized registration plate.
- (4) Acceptance of a surrendered registration plate, registration card, or registration renewal sticker, or acceptance of an affidavit stating why a person cannot surrender a registration plate, registration card, or registration renewal sticker.
- (5) Cancellation of a title because the vehicle has been junked.
- (6) Acceptance of an application for, or issuance of, a refund for a fee or a tax, other than the highway use tax.
- (7) Receipt of the civil penalty imposed by G.S. 20-309 for a lapse in financial responsibility or receipt of the restoration fee imposed by that statute.
- (8) Acceptance of a notice of failure to maintain financial responsibility for a motor vehicle.
- (9) Collection of the highway use tax.

Performance at the same time of any combination of the items that are listed within each subdivision or are listed within subdivisions (1) through (8) of this section is a single transaction. Performance of the item listed in subdivision (9) of this section in combination with any other items listed in this section is a separate transaction."

Requested by: Representatives Holmes, Creech, Esposito, Barbee, Bowie, Crawford, Senators Plyler, Perdue, Odom, Albertson, Edwards, Hoyle

**RESERVE FOR DETOXIFICATION OF WARREN COUNTY LANDFILL**

**Sec. 18.19.** Funds in the Reserve for PCB Cleanup in Section 4A of this act shall be used by the Division of Solid Waste Management, Department of Environment, Health, and Natural Resources, to fund a pilot project to identify and select a technology for detoxification and remediation of the PCB Landfill in Warren County.

It is the intent of the General Assembly that any further appropriations for this purpose shall not be made from the Highway Fund.

## **PART 19. DEPARTMENT OF CORRECTION**

Requested by: Senators Ballance, Rand, Parnell, Plyler, Perdue, Odom, Representatives Justus, Thompson, Kiser, Holmes, Creech, Esposito

### **PRIVATE PRISON BEDS**

**Sec. 19.** G.S. 148-37(g), as enacted by Section 19.10 of Chapter 324 of the 1995 Session Laws, reads as rewritten:

"(g) The Secretary of Correction may contract with private for-profit or nonprofit firms for the provision and operation of two or more confinement facilities totaling up to 1,000 beds in the State to house State prisoners when to do so would most economically and effectively promote the purposes served by the Department of Correction. This 1,000-bed limitation shall not apply to the 500 beds in private substance abuse treatment centers authorized by the General Assembly prior to July 1, 1995. Contracts entered under the



authority of this subsection shall be for a period not to exceed 10 years, shall be renewable from time to time for a period not to exceed 10 years, and are subject to the approval of the Council of State and the Department of Administration, after consultation with the Joint Legislative Commission on Governmental Operations. Confinement facilities provided under the authority of this subsection shall not be used for the purpose of consolidating existing State confinement facilities. The Secretary of Correction shall enter contracts under this subsection only if funds are appropriated for this purpose by the General Assembly. Contracts entered under the authority of this subsection may be subject to any requirements for the location of the confinement facilities set forth by the General Assembly in appropriating those funds.

Contracts made under the authority of this subsection may provide the State with an option to purchase the confinement facility or may provide for the purchase of the confinement facility by the State. Contracts made under the authority of this subsection shall state that plans and specifications for private confinement facilities shall be furnished to and reviewed by the Office of State Construction. The Office of State Construction shall inspect and review each project during construction to ensure that the project is suitable for habitation and to determine whether the project would be suitable for future acquisition by the State. The Department of Correction may give preference to facilities intended for joint county and State use where such facilities are developed by public/private partnerships and financed by tax-exempt bond issues, and where such facilities offer general terms and conditions favorable to the State in the competitive bidding process pursuant to Article 8 of Chapter 143 of the General Statutes. All contracts for the housing of State prisoners in private confinement facilities shall require a minimum of ten million dollars (\$10,000,000) of occurrence-based liability insurance and shall hold the State harmless and provide reimbursement for all liability arising out of actions caused by operations and employees of the private confinement facility.

Prisoners housed in private confinement facilities pursuant to this subsection shall remain subject to the rules adopted for the conduct of persons committed to the State prison system. The Secretary of Correction may review and approve the design and construction of private confinement facilities before housing State prisoners in these facilities. The rules regarding good time, gain time, and earned credits, discipline, classification, extension of the limits of confinement, transfers, housing arrangements, and eligibility for parole shall apply to inmates housed in private confinement facilities pursuant to this subsection. The operators of private confinement facilities may adopt any other rules as may be necessary for the operation of those facilities with the written approval of the Secretary of Correction. Custodial officials employed by a private confinement facility are agents of the Secretary of Correction and may use those procedures for use of force authorized by the Secretary of Correction to defend themselves, to enforce the observance of discipline in compliance with confinement facility rules, to secure the person of a prisoner, and to prevent escape. Private firms under this subsection shall employ inmate disciplinary and grievance policies of the North Carolina Department of Correction."

Requested by: Representatives Justus, Thompson, Mercer, Senator Ballance  
**EXTERNAL CONSULTANT TO EVALUATE DOC SUBSTANCE ABUSE PROGRAMS**

**Sec. 19.1.** Of the funds appropriated to the Department of Correction for the 1995-96 fiscal year, the Department shall use up to twenty-five thousand dollars (\$25,000) to hire an external consultant to evaluate the DART prison substance abuse program and private substance abuse programs funded by the Department as follows:

- (1) Evaluate the appropriateness of the treatment methodology used for those programs;
- (2) Evaluate the cost-effectiveness of those programs, with an emphasis on the number and type of staff employed; and
- (3) Evaluate the effectiveness of those programs in reducing recidivism and drug dependency, if such data is available, or develop evaluation standards and a process for conducting such evaluations and reporting the results.

The Department shall provide the consultant's report to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by May 1, 1996.

Requested by: Representatives Justus, Thompson, Kiser, Senators Ballance, Rand

**RESERVE FOR BUNKING INMATES IN SHIFTS**

**Sec. 19.2.** (a) Of the funds appropriated to the Department of Correction for the 1995-96 fiscal year, the sum of two hundred fifty thousand dollars (\$250,000) shall be placed in a Reserve for Bunking Inmates in Shifts. The Department of Correction shall develop a plan for a pilot program at Lincoln Correctional Center that provides for arranging inmates' daily activities in such a manner that at least two different groups of inmates may occupy the same dormitory space during different portions of each 24-hour day. In the course of planning this pilot program, the Department shall consult with the Attorney General and the federal courts to ensure that such an arrangement will not violate the State's obligations under law.

(b) The Department shall report on the development of its plan to bunk inmates in shifts, including its efforts to obtain court approval for the plan, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections Oversight Committee, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by May 15, 1996.

Requested by: Representatives Justus, Thompson, Pulley, Senator Ballance  
**NOTICE OF COMMUTATIONS**

**Sec. 19.3.** (a) G.S. 147-16 reads as rewritten:  
*"§ 147-16. Records kept; certain original applications ~~preserved~~, preserved; notice of commutations.*

- (a) The Governor shall cause to be kept the following records:

- (1) A register of all applications for pardon, or for commutation of any sentence, with a list of the official signatures and recommendations in favor of such application.
- (2) An account of all his official expenses and disbursements, including the incidental expenses of his department, and the rewards offered by him for the apprehension of criminals.

These records and the originals of all applications, petitions, and recommendations and reports therein mentioned shall be preserved in the office of the Governor, but when applications for offices are refused he may, in his discretion, return the papers referring to the application.

(b) The Governor shall, unless otherwise requested by any person listed in subdivisions (1) through (4) of this subsection, provide notice of the commutation of any sentence within 20 days after the commutation by first-class mail to the following at the last known address:

- (1) The victim or victims of the crime for which the sentence was imposed;
- (2) The victims' spouse, children, and parents;
- (3) Any other members of the victims' family who request in writing to be notified; and
- (4) The Chairs of the Joint Legislative Corrections Oversight Committee."

(b) This section is effective upon ratification.

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Kiser

#### **REIMBURSE COUNTIES FOR EXTRAORDINARY MEDICAL COSTS FOR INMATES AWAITING TRANSFER TO STATE PRISON SYSTEM**

**Sec. 19.4.** Notwithstanding the provisions of G.S. 148-29, the Secretary of Correction may use funds appropriated to the Department of Correction for medical services to reimburse counties for extraordinary medical costs, as defined in G.S. 148-32.1(a), incurred by inmates housed in local confinement facilities awaiting transfer in the State prison system.

Requested by: Senators Ballance, Parnell, Plyler, Perdue, Odom, Representatives Holmes, Creech, Esposito

#### **CREATE NEW OFFENSE CLASS AND PUNISHMENT ROW FOR MISDEMEANOR ASSAULTS/CREATE FELONY OFFENSE OF ASSAULT ON A LAW ENFORCEMENT OFFICER/INCREASE PENALTIES FOR POSSESSION OF A FIREARM BY A FELON/LENGTHEN MINIMUM SENTENCES FOR FELONY OFFENSE CLASSES B2, C, AND D/AUTHORIZE ACTIVE SENTENCE FOR PRIOR RECORD LEVELS I AND II OF FELONY OFFENSE CLASS H/MAKE AIRPORT OBSTRUCTIONS ILLEGAL/LOWER FOOD STAMP FRAUD FELONY THRESHOLD/INCREASE PENALTY FOR FIRST DEGREE SEXUAL EXPLOITATION OF MINOR/INCREASE PENALTY FOR PROMOTING PROSTITUTION OF MINOR**

**Sec. 19.5.** (a) Funds appropriated in this act to construct 1,384 prison beds shall increase prison capacity to the level necessary to provide

for the increases in criminal penalties provided for in this section and the following section.

(b) G.S. 14-33 as amended by Chapter 352 of the 1995 Session Laws reads as rewritten:

*"§ 14-33. Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments.*

(a) Any person who commits a simple assault or a simple assault and battery or participates in a simple affray is guilty of a Class 4 2 misdemeanor.

(b) Unless his conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class 1 misdemeanor if, in the course of the assault, assault and battery, or affray, he:

- (1) ~~Inflicts, or attempts to inflict, serious injury upon another person or uses a deadly weapon;~~
- (2) ~~Assaults a female, he being a male person at least 18 years of age;~~
- (3) ~~Assaults a child under the age of 12 years;~~
- (4) through (7) Repealed by Session Laws 1991, c. 525, s. 1;
- (8) ~~Assaults an officer or employee of the State or of any political subdivision of the State, a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes, or a campus police officer certified pursuant to the provisions of Chapter 17C or Chapter 116 of the General Statutes, when the officer or employee is discharging or attempting to discharge his official duties; or~~
- (9) Commits an assault and battery against a sports official when the sports official is discharging or attempting to discharge official duties at a sports event, or immediately after the sports event at which the sports official discharged official duties. A 'sports official' is a person at a sports event who enforces the rules of the event, such as an umpire or referee, or a person who supervises the participants, such as a coach. A 'sports event' includes any interscholastic or intramural athletic activity in a primary, middle, junior high, or high school, college, or university, any organized athletic activity sponsored by a community, business, or nonprofit organization, any athletic activity that is a professional or semiprofessional event, and any other organized athletic activity in the State.
- (10) ~~Assaults a school bus driver, school bus monitor, or school employee who is boarding the school bus or who is on the school bus.~~

(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class A1 misdemeanor if, in the course of the assault, assault and battery, or affray, he or she:

- (1) Inflicts serious injury upon another person or uses a deadly weapon;
- (2) Assaults a female, he being a male person at least 18 years of age;



- (3) Assaults a child under the age of 12 years;
- (4) Assaults an officer or employee of the State or any political subdivision of the State, when the officer or employee is discharging or attempting to discharge his official duties; or
- (5) Assaults a school bus driver, school bus monitor, or school employee who is boarding the school bus or who is on the school bus."

(c) Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-33.2. Habitual misdemeanor assault.

A person commits the offense of habitual misdemeanor assault if that person violates any of the provisions of G.S. 14-33(c) or G.S. 14-34 and has been convicted of five or more prior misdemeanor convictions, two of which were assaults. A person convicted of violating this section is guilty of a Class H felony."

(d) G.S. 14-34 reads as rewritten:

"§ 14-34. Assaulting by pointing gun.

If any person shall point any gun or pistol at any person, either in fun or otherwise, whether such gun or pistol be loaded or not loaded, he shall be guilty of a Class 4 A1 misdemeanor."

(e) G.S. 15A-1332(c) reads as rewritten:

"(c) Presentence Commitment for Study. -- When the court desires more detailed information as a basis for determining the sentence to be imposed than can be provided by a presentence investigation, the court may commit a defendant to the Department of Correction for study for the shortest period necessary to complete the study, not to exceed 90 days, if that defendant has been charged with or convicted of any felony or a Class A1 or Class 1 misdemeanor crime or crimes for which he may be imprisoned for more than six months and if he consents. The period of commitment must end when the study is completed, and may not exceed 90 days. The Department must conduct a complete study of a defendant committed to it under this subsection, inquiring into such matters as the defendant's previous delinquency or criminal experience, his social background, his capabilities, his mental, emotional and physical health, and the availability of resources or programs appropriate to the defendant. Upon completion of the study or the end of the 90-day period, whichever occurs first, the Department of Correction must release the defendant to the sheriff of the county in which his case is docketed. The Department must forward the study to the clerk in that county, including whatever recommendations the Department believes will be helpful to a proper resolution of the case. When a defendant is returned from a presentence commitment for study, the conditions of pretrial release which obtained for the defendant before the commitment continue until judgment is entered, unless the conditions are modified under the provisions of G.S. 15A-534(e)."

(f) G.S. 15A-1340.14(b) reads as rewritten:

"(b) Points. -- Points are assigned as follows:

- (1) For each prior felony Class A conviction, 10 points.
- (1a) For each prior felony Class B1 conviction, 9 points.
- (2) For each prior felony Class B2, C, or D conviction, 6 points.



- (3) For each prior felony Class E, F, or G conviction, 4 points.
- (4) For each prior felony Class H or I conviction, 2 points.
- (5) For each prior Class A1 or Class 1 misdemeanor conviction, 1 point, except that convictions for Class 1 misdemeanor offenses under Chapter 20 of the General Statutes, other than conviction for misdemeanor death by vehicle (G.S. 20-141.4(a2)), shall not be assigned any points for purposes of determining a person's prior record for felony sentencing.
- (6) If all the elements of the present offense are included in the prior offense, 1 point.
- (7) If the offense was committed while the offender was on probation or parole, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction."

(g) G.S. 15A-1340.23 reads as rewritten:

"§ 15A-1340.23. *Punishment limits for each class of offense and prior conviction level.*

(a) **Offense Classification; Default Classifications.** -- The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a misdemeanor for which there is no classification, it is as classified in G.S. 14-3.

(b) **Fines.** -- Any judgment that includes a sentence of imprisonment may also include a fine. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. If a community punishment is authorized, the judgment may consist of a fine only. Unless otherwise provided for a specific offense, the maximum fine that may be imposed is two hundred dollars (\$200.00) for a Class 3 misdemeanor and one thousand dollars (\$1,000) for a Class 2 misdemeanor. The amount of the fine for a Class 1 misdemeanor and a Class A1 misdemeanor is in the discretion of the court.

(c) **Punishment for Each Class of Offense and Prior Conviction Level; Punishment Chart Described.** -- Unless otherwise provided for a specific offense, the authorized punishment for each class of offense and prior conviction level is as specified in the chart below. Prior conviction levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offenses are indicated by the Arabic numbers placed vertically on the left side of the chart. Each grid on the chart contains the following components:

- (1) A sentence disposition or dispositions: 'C' indicates that a community punishment is authorized; 'I' indicates that an intermediate punishment is authorized; and 'A' indicates that an active punishment is authorized; and

- (2) A range of durations for the sentence of imprisonment: any sentence within the duration specified is permitted.

### PRIOR CONVICTION LEVELS

#### MISDEMEANOR

OFFENSE CLASS	<u>LEVEL I</u> No Prior Convictions	<u>LEVEL II</u> One to Four Prior Convictions	<u>LEVEL III</u> Five or More Prior Convictions
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A1	1-60 days C/I/A	1-75 days C/I/A	1-150 days C/I/A
1	1-45 days C	1-45 days C/I/A	1-120 days C/I/A
2	1-30 days C	1-45 days C/I	1-60 days C/I/A
3	1-10 days C	1-15 days C/I	1-20 days C/I/A."

(h) G.S. 15A-1343.1, as rewritten by Chapter 446 of the 1995 Session Laws, reads as rewritten:

"§ 15A-1343.1. *Criteria for selection and sentencing to IMPACT.*

The criteria for selecting and sentencing offenders to the Intensive Motivational Program of Alternative Correctional Treatment as provided under G.S. 15A-1343(b1)(2A) shall be as follows:

- (1) The offender must be between the ages of 16 and 30;
- (2) The offender must be convicted of a Class 1 ~~misdemeanor~~ misdemeanor, Class A1 misdemeanor, or a felony.
- (3) The offender must submit to a medical evaluation by a physician approved by his probation or parole officer and must be certified by the physician to be medically fit for program participation."

(i) G.S. 14-34.2 reads as rewritten:

"§ 14-34.2. *Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers.*

Any Unless a person's conduct is covered under some other provision of law providing greater punishment, any person who commits an assault with a firearm or any other deadly weapon upon an officer or employee of the State or of any political subdivision of the State, a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes, or a campus police officer certified pursuant to the provisions of Chapter 17C or Chapter 116 of the General Statutes, in the performance of his duties shall be guilty of a Class F felony."

(j) Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-34.5. *Assault with a firearm on a law enforcement officer.*

Any person who commits an assault with a firearm upon a law enforcement officer in the performance of his or her duties is guilty of a Class E felony."

(k) G.S. 14-415.1(a) reads as rewritten:

"(a) It shall be unlawful for any person who has been convicted of any crime set out in subsection (b) of this section to purchase, own, possess, or have in his custody, care, or control any handgun or other firearm with a barrel length of less than 18 inches or an overall length of less than 26 inches, or any weapon of mass death and destruction as defined in G.S. 14-288.8(c), within five years from the date of such conviction, or the

unconditional discharge from a correctional institution, or termination of a suspended sentence, probation, or parole upon such conviction, whichever is later.

Every person violating the provisions of this section shall be punished as a Class ~~H~~ G felon.

Nothing in this subsection would prohibit the right of any person to have possession of a firearm within his own home or on his lawful place of business."

(l) G.S. 15A-1340.17(c) reads as rewritten:

"(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. -- The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

- (1) A sentence disposition or dispositions: 'C' indicates that a community punishment is authorized; 'I' indicates that an intermediate punishment is authorized; 'A' indicates that an active punishment is authorized; and 'Life Imprisonment Without Parole' indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.
- (2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.
- (3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.
- (4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

#### PRIOR RECORD LEVEL

I	II	III	IV	V	VI
0 Pts	1-4 Pts	5-8 Pts	9-14 Pts	15-18 Pts	19+ Pts

A Life Imprisonment or Death as Established by Statute

A	A	A	A	A	A	DISPOSITION
240-300	288-360	336-420	384-480	Life Imprisonment Without Parole		Aggravated

B1	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE
	144-192	173-230	202-269	230-307	260-346	288-384	Mitigated

	A	A	A	A	A	A	DISPOSITION
	<del>135-169</del>	<del>163-204</del>	<del>190-238</del>	<del>216-270</del>	<del>243-304</del>	<del>270-338</del>	Aggravated
B2	<del>108-135</del>	<del>130-163</del>	<del>152-190</del>	<del>173-216</del>	<del>194-243</del>	<del>216-270</del>	PRESUMPTIVE
	<del>81-108</del>	<del>98-130</del>	<del>114-152</del>	<del>130-173</del>	<del>146-194</del>	<del>162-216</del>	Mitigated
	<del>157-196</del>	<del>189-237</del>	<del>220-276</del>	<del>251-313</del>	<del>282-353</del>	<del>313-392</del>	Aggravated
B2	<del>125-157</del>	<del>151-189</del>	<del>176-220</del>	<del>201-251</del>	<del>225-282</del>	<del>251-313</del>	PRESUMPTIVE
	<del>94-125</del>	<del>114-151</del>	<del>132-176</del>	<del>151-201</del>	<del>169-225</del>	<del>188-251</del>	Mitigated

	A	A	A	A	A	A	DISPOSITION
	<del>63-79</del>	<del>86-108</del>	<del>100-125</del>	<del>115-144</del>	<del>130-162</del>	<del>145-181</del>	Aggravated
C	<del>50-63</del>	<del>69-86</del>	<del>80-100</del>	<del>92-115</del>	<del>104-130</del>	<del>116-145</del>	PRESUMPTIVE
	<del>38-50</del>	<del>52-69</del>	<del>60-80</del>	<del>69-92</del>	<del>78-104</del>	<del>87-116</del>	Mitigated
	<del>73-92</del>	<del>100-125</del>	<del>116-145</del>	<del>133-167</del>	<del>151-188</del>	<del>168-210</del>	Aggravated
C	<del>58-73</del>	<del>80-100</del>	<del>93-116</del>	<del>107-133</del>	<del>121-151</del>	<del>135-168</del>	PRESUMPTIVE
	<del>44-58</del>	<del>60-80</del>	<del>70-93</del>	<del>80-107</del>	<del>90-121</del>	<del>101-135</del>	Mitigated

	A	A	A	A	A	A	DISPOSITION
	<del>55-69</del>	<del>66-82</del>	<del>89-111</del>	<del>101-126</del>	<del>115-144</del>	<del>126-158</del>	Aggravated
D	<del>44-55</del>	<del>53-66</del>	<del>71-89</del>	<del>81-101</del>	<del>92-115</del>	<del>101-126</del>	PRESUMPTIVE
	<del>33-44</del>	<del>40-53</del>	<del>53-71</del>	<del>61-81</del>	<del>69-92</del>	<del>76-101</del>	Mitigated
	<del>64-80</del>	<del>77-95</del>	<del>103-129</del>	<del>117-146</del>	<del>133-167</del>	<del>146-183</del>	Aggravated
D	<del>51-64</del>	<del>61-77</del>	<del>82-103</del>	<del>94-117</del>	<del>107-133</del>	<del>117-146</del>	PRESUMPTIVE
	<del>38-51</del>	<del>46-61</del>	<del>61-82</del>	<del>71-94</del>	<del>80-107</del>	<del>88-117</del>	Mitigated

	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated

	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated

	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated

	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated

	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated

I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

(m) Chapter 63 of the General Statutes is amended by adding a new section to read:

"§ 63-37.1. Airport obstructions illegal.

Any person, other than the owner or operator of an airport, who intentionally obstructs the lawful takeoff and landing operations and patterns of aircraft at an existing public or private airport shall be guilty of a Class 1 misdemeanor."

(n) G.S. 108A-53(a) reads as rewritten:

"(a) Any person, whether provider or recipient or person representing himself as such, who knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any food stamps or authorization cards to which he is not entitled in the amount of ~~two thousand dollars (\$2,000)~~ one thousand dollars (\$1,000) or less shall be guilty of a Class 1 misdemeanor. Whoever knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any food stamps or authorization cards to which he is not entitled in an amount more than ~~two thousand dollars (\$2,000)~~ one thousand dollars (\$1,000) shall be guilty of a Class 1 felony."

(o) G.S. 14-190.16(d) reads as rewritten:

"(d) Punishment and Sentencing. -- Violation of this section is a Class ~~E~~ D felony."

(p) G.S. 14-190.18(c) reads as rewritten:

"(c) Punishment and Sentencing. -- Violation of this section is a Class ~~F~~ D felony."

(q) This section becomes effective December 1, 1995, and applies to offenses committed on or after that date.

Requested by: Senators Gulley, Ballance, Rand, Representatives Hiatt, Justus, Thompson, Kiser

### **ASSAULT EMERGENCY MEDICAL PERSONNEL**

**Sec. 19.6.** (a) Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-34.5. Assault or affray on an emergency medical technician, ambulance attendant, emergency department nurse, or emergency department physician.

(a) A person is guilty of a Class A1 misdemeanor if the person commits an assault or an affray on an emergency medical technician, ambulance attendant, emergency department nurse, or emergency department physician while the technician, attendant, nurse, or physician is discharging or attempting to discharge official duties.



(b) Unless a person's conduct is covered under some other provision of law providing greater punishment, a person is guilty of a Class I felony if the person violates subsection (a) of this section and (i) inflicts bodily injury or (ii) uses a deadly weapon other than a firearm.

(c) Unless a person's conduct is covered under some other provision of law providing greater punishment, a person is guilty of a Class F felony if the person violates subsection (a) of this section and uses a firearm."

(b) This section becomes effective December 1, 1995, and applies to offenses committed on or after that date.

Requested by: Senators Ballance, Rand. Representatives Justus, Thompson, Kiser

### **HARRIET'S HOUSE FUNDS**

**Sec. 19.7.** Of the funds appropriated to the Department of Correction, the sum of two hundred thousand dollars (\$200,000) for the 1995-96 fiscal year and the sum of two hundred thousand dollars (\$200,000) for the 1996-97 fiscal year shall be used to support the programs of Harriet's House, a transitional home for female ex-offenders and their children. Harriet's House shall report quarterly to the Joint Legislative Commission on Governmental Operations on the expenditure of State appropriations and on the effectiveness of the program including information on the number of clients served and the number of clients who successfully complete the Harriet's House program.

Requested by: Senators Ballance, Rand. Representatives Justus, Thompson, Kiser

### **DEPARTMENT OF CORRECTION/DEPARTMENT OF HUMAN RESOURCES JOINT PLAN/RESERVE FOR SUBSTANCE ABUSE TREATMENT PILOT PROGRAM FOR PAROLEES AND PROBATIONERS**

**Sec. 19.8.** (a) The balance of the five hundred eighty-three thousand dollars (\$583,000) appropriated in Chapter 24 of the Session Laws of the 1994 Extra Session to the Department of Correction for the 1994-95 fiscal year for an intensive out-patient substance abuse treatment pilot program for parolees and probationers with serious substance abuse histories shall not revert at the end of the fiscal year but shall remain in the Department for that purpose. The Department of Correction and the Department of Human Resources shall jointly report on the development and implementation of the pilot program to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety not later than May 15, 1996.

(b) This section becomes effective June 30, 1995.

Requested by: Senators Ballance, Rand. Representatives Justus, Thompson, Kiser

### **EXEMPTION FROM LICENSURE AND CERTIFICATE OF NEED**

**Sec. 19.9.** (a) Inpatient chemical dependency or substance abuse facilities that provide services exclusively to inmates of the Department of Correction shall be exempt from licensure by the Department of Human

Resources under Chapter 122C of the General Statutes. If an inpatient chemical dependency or substance abuse facility provides services both to inmates of the Department of Correction and to members of the general public, the portion of the facility that serves inmates shall be exempt from licensure.

(b) Any person who contracts to provide inpatient chemical dependency or substance abuse services to inmates of the Department of Correction may construct and operate a new chemical dependency or substance abuse facility for that purpose without first obtaining a certificate of need from the Department of Human Resources pursuant to Article 9 of Chapter 131E of the General Statutes. However, a new facility or addition developed for that purpose without a certificate of need shall not be licensed pursuant to Chapter 122C of the General Statutes and shall not admit anyone other than inmates unless the owner or operator first obtains a certificate of need.

(c) This section applies to existing facilities, as well as future facilities contracting with the Department of Correction.

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Kiser

#### **CORRECTIONS OVERSIGHT STUDY SALARY CONTINUATION**

**Sec. 19.10.** (a) The Joint Legislative Corrections Oversight Committee shall study the salary continuation program in the Department of Correction provided for in Article 12B of Chapter 143 of the General Statutes. The Committee shall review:

- (1) The numbers and types of positions in the Department of Correction currently receiving the benefit;
- (2) The number and types of accidents occurring for which employees receive salary continuation;
- (3) The application of this benefit to accidents and injuries on the job;
- (4) The application of this benefit to certified positions and not to non-certified positions;
- (5) The costs of this benefit to the Department and methods for reducing future costs.

(b) The Joint Legislative Corrections Oversight Committee shall report its findings and recommendations to the 1995 General Assembly, 1996 Regular Session.

Requested by: Senators Ballance, Rand, Plyler, Odom, Representatives Justus, Thompson, Kiser

#### **DART AFTERCARE FUNDS**

**Sec. 19.11.** Funds appropriated in this act to the Department of Correction for a Drug Alcohol Recovery Treatment (DART) aftercare program shall be used to contract for up to three pilot programs statewide to provide aftercare services, including counseling and job referral services, for DART DWI offenders and other offenders who have completed a DART program in the Division of Prisons.

The Department of Correction shall report on the pilot programs to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and

Public Safety by May 15, 1996. The report shall include information on the number of clients served, the quality of services, the cost-effectiveness of the services, and the benefits of the programs to offenders.

Requested by: Representatives Justus, Thompson, Kiser, Senators Ballance, Rand

#### **WAIVER OF STATE PERSONNEL ACT REQUIREMENTS**

**Sec. 19.12.** To the extent necessary in order to comply timely with a settlement agreement resulting from Title VII litigation, the Department of Correction may waive the requirements of the State Personnel Act contained in G.S. 126-7.1 and G.S. 126-16. This section applies only to the seventeen positions approved for Title VII compliance.

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Kiser

#### **FEDERAL GRANT REPORTING**

**Sec. 19.13.** The Department of Correction, the Department of Justice, the Department of Crime Control and Public Safety, and the Judicial Department shall report by December 1 and June 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on federal grant funds received or pre-approved for receipt by those departments. The report shall include information on the amount of grant funds received or pre-approved for receipt by each department, the use of the funds, and the State match expended to receive the funds.

### **PART 20. DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY**

Requested by: Representatives Justus, Thompson, Kiser, Senators Ballance, Rand

#### **COMMUNITY SERVICE DISTRICT SUPERVISOR RESIDENCY REQUIREMENT**

**Sec. 20.** (a) G.S. 143B-475.1 is amended by adding a new subsection to read:

"(e) In order to maximize the efficiency and effectiveness of the community service program, (i) beginning September 1, 1995, community service program districts shall have the same boundaries as the district court districts established in G.S. 7A-133 and (ii) beginning with persons hired on or after September 1, 1995, all community service program district supervisors employed by the Department of Crime Control and Public Safety to supervise each of the community service program districts shall reside in the district in which the supervisor works."

(b) This section is effective upon ratification.

### **PART 21. JUDICIAL DEPARTMENT**

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Kiser

**INCREASE MAXIMUM ALLOWABLE MAGISTRATES FOR CURRITUCK, PASQUOTANK AND SURRY COUNTIES/DIVIDE DISTRICT COURT DISTRICT 9/ADD JUDGE IN DISTRICT COURT DISTRICT 29/ADD TWO SPECIAL SUPERIOR COURT JUDGES/MAGISTRATES ELIGIBILITY**

**Sec. 21.1.** (a) Article 18 of Chapter 7A of the General Statutes is amended by adding a new section to read:

*"§ 7A-200. District and set of districts defined; chief district court judges and their authority.*

(a) In this section:

- (1) 'District' means any district court district established by G.S. 7A-133 which consists exclusively of one or more entire counties;
- (2) 'Set of districts' means any set of two or more district court districts established under G.S. 7A-133, none of which consists exclusively of one or more entire counties, but both or all of which include territory from the same county or counties and together comprise all of the territory of that county or those counties; and
- (3) 'Chief district court judge' means in the case of a set of districts, the chief district court judge for those districts, designated by the chief justice from among the district court judges for the districts in the set of districts.

(b) Whenever by law a duty is imposed upon the chief district court judge, it means for a set of districts the chief district court judge designated under subsection (a)(3) of this section."

(b) Article 14 of Chapter 7A of the General Statutes is amended by adding a new section to read:

*"§ 7A-149. Jurisdiction; sessions.*

(a) Notwithstanding any other provision of law, a district court judge of a district court district which is in a set of districts as defined by G.S. 7A-200 has jurisdiction in the entire county or counties in which the district is located to the same extent as if the district encompassed the entire county, and has jurisdiction in the entire set of districts to the same extent as if the district encompassed the entire set of districts.

(b) All sessions of district court shall be for an entire county, whether that county comprises or is located in a district or in a set of districts as defined in G.S. 7A-200, and at each session all matters and proceedings arising anywhere in the county may be heard.

(c) All clerks of court for a county have jurisdiction over the entire county, notwithstanding that the county may be part of a set of districts."

(c) G.S. 7A-133 reads as rewritten:

*"§ 7A-133. Numbers of judges by districts: numbers of magistrates and additional seats of court, by counties.*

(a) Each district court district shall have the numbers of judges and each county within the district shall have the numbers of magistrates and additional seats of court, as set forth in the following table:

District	Judges	County	Magistrates		Additional Seats of Court
			Min.	Max.	
1	4	Camden	1	2	
		Chowan	2	3	
		Currituck	1	2	
		Dare	3	8	
		Gates	2	3	
		Pasquotank	3	4	
		Perquimans	2	3	
2	3	Martin	5	8	
		Beaufort	4	8	
		Tyrrell	1	3	
		Hyde	2	4	
		Washington	3	4	
3A	3	Pitt	10	12	Farmville
3B	4	Craven	7	10	Ayden
		Pamlico	2	3	Havelock
		Carteret	5	8	
4	6	Sampson	6	8	
		Duplin	9	11	
		Jones	2	3	
		Onslow	8	14	
5	6	New Hanover	6	11	
		Pender	4	6	
6A	2	Halifax	9	14	Roanoke Rapids, Scotland Neck
6B	3	Northampton	5	6	
		Bertie	4	5	
		Hertford	5	6	
7	6	Nash	7	10	Rocky Mount
		Edgecombe	4	6	Rocky Mount
		Wilson	4	6	
8	5	Wayne	5	11	Mount Olive
		Greene	2	4	
		Lenoir	4	10	La Grange
9	4	Granville	3	7	
		(part of Vance see subsection (b))	3	5	
		Warren	3	4	
		Franklin	3	6	
9A	2	Person	3	4	
		Caswell	2	5	
9B	1	Warren			
		(part of Vance see subsection (b))			



10	12	Wake	12	20	Apex, Wendell, Fuquay- Varina, Wake Forest
11	6	Harnett Johnston	7 10	11 12	Dunn Benson, Clayton and Selma
		Lee	4	6	
12	6	Cumberland	10	17	
13	4	Bladen	4	6	
		Brunswick	4	7	
		Columbus	6	8	Tabor City
14	5	Durham	8	12	
15A	3	Alamance	7	10	Burlington
15B	3	Orange	4	11	Chapel Hill
		Chatham	3	8	Siler City
16A	2	Scotland	3	5	
		Hoke	4	5	
16B	5	Robeson	8	16	Fairmont, Maxton, Pembroke, Red Springs, Rowland, St. Pauls
17A	2	Rockingham	4	9	Reidsville, Eden, Madison
17B	3	Stokes	2	5	
		Surry	5	8	Mt. Airy
18	10	Guilford	20	26	High Point
19A	3	Cabarrus	5	9	Kannapolis
19B	3	Montgomery	2	4	
		Randolph	5	8	Liberty
19C	3	Rowan	5	10	
20	6	Stanly	5	6	
		Union	4	6	
		Anson	4	5	
		Richmond	5	6	Hamlet
		Moore	5	8	Southern Pines
21	7	Forsyth	3	15	Kernersville
22	7	Alexander	2	3	
		Davidson	7	10	Thomasville
		Davie	2	3	
		Iredell	4	9	Mooreville
23	3	Alleghany	1	2	
		Ashe	3	4	

		Wilkes	4	6	
		Yadkin	3	5	
24	3	Avery	3	4	
		Madison	4	5	
		Mitchell	3	4	
		Watauga	4	6	
		Yancey	2	4	
25	7	Burke	4	7	
		Caldwell	4	7	
		Catawba	6	10	Hickory
26	14	Mecklenburg	15	26	
27A	5	Gaston	11	20	
27B	4	Cleveland	5	8	
		Lincoln	4	6	
28	5	Buncombe	6	15	
29	4 5	Henderson	4	6	
		McDowell	3	5	
		Polk	3	4	
		Rutherford	6	8	
		Transylvania	2	4	
30	4	Cherokee	3	4	
		Clay	1	2	
		Graham	2	3	
		Haywood	5	7	Canton
		Jackson	3	4	
		Macon	3	4	
		Swain	2	3	

(b) For district court districts of less than a whole county, or with part or all of one county with part of another, the composition of the district is as follows:

- (1) District Court District 9 consists of Franklin and Granville Counties and the remainder of Vance County not in District Court District 9B.
- (2) District Court District 9B consists of Warren County and East Henderson I, North Henderson I, North Henderson II, Middleburg, Townsville, and Williamsboro Precincts of Vance County.

Precinct boundaries as used in this section for Vance County are those shown on maps on file with the Legislative Services Office on May 1, 1991, and for other counties are those reported by the United States Bureau of the Census under Public Law 94-171 for the 1990 Census in the IVTD Version of the TIGER files.

(c) Each county shall have the numbers of magistrates and additional seats of district court, as set forth in the following table:

County	Magistrates Min.-Max.	Additional Seats of Court
Camden	1	2

<u>Chowan</u>	<u>2</u>	<u>3</u>	
<u>Currituck</u>	<u>1</u>	<u>3</u>	
<u>Dare</u>	<u>3</u>	<u>8</u>	
<u>Gates</u>	<u>2</u>	<u>3</u>	
<u>Pasquotank</u>	<u>3</u>	<u>5</u>	
<u>Perquimans</u>	<u>2</u>	<u>3</u>	
<u>Martin</u>	<u>5</u>	<u>8</u>	
<u>Beaufort</u>	<u>4</u>	<u>8</u>	
<u>Tyrrell</u>	<u>1</u>	<u>3</u>	
<u>Hyde</u>	<u>2</u>	<u>4</u>	
<u>Washington</u>	<u>3</u>	<u>4</u>	
<u>Pitt</u>	<u>10</u>	<u>12</u>	<u>Farmville</u>
			<u>Ayden</u>
<u>Craven</u>	<u>7</u>	<u>10</u>	<u>Havelock</u>
<u>Pamlico</u>	<u>2</u>	<u>3</u>	
<u>Carteret</u>	<u>5</u>	<u>8</u>	
<u>Sampson</u>	<u>6</u>	<u>8</u>	
<u>Duplin</u>	<u>9</u>	<u>11</u>	
<u>Jones</u>	<u>2</u>	<u>3</u>	
<u>Onslow</u>	<u>8</u>	<u>14</u>	
<u>New Hanover</u>	<u>6</u>	<u>11</u>	
<u>Pender</u>	<u>4</u>	<u>6</u>	
<u>Halifax</u>	<u>9</u>	<u>14</u>	<u>Roanoke</u>
			<u>Rapids,</u>
			<u>Scotland Neck</u>
<u>Northampton</u>	<u>5</u>	<u>6</u>	
<u>Bertie</u>	<u>4</u>	<u>5</u>	
<u>Hertford</u>	<u>5</u>	<u>6</u>	
<u>Nash</u>	<u>7</u>	<u>10</u>	<u>Rocky Mount</u>
<u>Edgecombe</u>	<u>4</u>	<u>6</u>	<u>Rocky Mount</u>
<u>Wilson</u>	<u>4</u>	<u>6</u>	
<u>Wayne</u>	<u>5</u>	<u>11</u>	<u>Mount Olive</u>
<u>Greene</u>	<u>2</u>	<u>4</u>	
<u>Lenoir</u>	<u>4</u>	<u>10</u>	<u>La Grange</u>
<u>Granville</u>	<u>3</u>	<u>7</u>	
<u>Vance</u>	<u>3</u>	<u>5</u>	
<u>Warren</u>	<u>3</u>	<u>4</u>	
<u>Franklin</u>	<u>3</u>	<u>6</u>	
<u>Person</u>	<u>3</u>	<u>4</u>	
<u>Caswell</u>	<u>2</u>	<u>5</u>	
<u>Wake</u>	<u>12</u>	<u>20</u>	<u>Apex,</u>
			<u>Wendell,</u>
			<u>Fuquay-</u>
			<u>Varina,</u>
			<u>Wake Forest</u>
<u>Harnett</u>	<u>7</u>	<u>11</u>	<u>Dunn</u>
<u>Johnston</u>	<u>10</u>	<u>12</u>	<u>Benson,</u>
			<u>Clayton,</u>
			<u>Selma</u>

<u>Lee</u>	4	6
<u>Cumberland</u>	<u>10</u>	<u>17</u>
<u>Bladen</u>	4	6
<u>Brunswick</u>	4	7
<u>Columbus</u>	6	8
<u>Durham</u>	8	12
<u>Alamance</u>	7	10
<u>Orange</u>	4	11
<u>Chatham</u>	3	8
<u>Scotland</u>	3	5
<u>Hoke</u>	4	5
<u>Robeson</u>	8	16

<u>Rockingham</u>	4	9
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<u>Stokes</u>	2	5
<u>Surry</u>	5	9
<u>Guilford</u>	<u>20</u>	<u>26</u>
<u>Cabarrus</u>	5	9
<u>Montgomery</u>	2	4
<u>Randolph</u>	5	8
<u>Rowan</u>	5	10
<u>Stanly</u>	5	6
<u>Union</u>	4	6
<u>Anson</u>	4	5
<u>Richmond</u>	5	6
<u>Moore</u>	5	8

<u>Forsyth</u>	3	15
<u>Alexander</u>	2	3
<u>Davidson</u>	7	10
<u>Davie</u>	2	3
<u>Iredell</u>	4	9
<u>Alleghany</u>	1	2
<u>Ashe</u>	3	4
<u>Wilkes</u>	4	6
<u>Yadkin</u>	3	5
<u>Avery</u>	3	4
<u>Madison</u>	4	5
<u>Mitchell</u>	3	4
<u>Watauga</u>	4	6
<u>Yancey</u>	2	4
<u>Burke</u>	4	7
<u>Caldwell</u>	4	7

Tabor City

Burlington  
Chapel Hill  
Siler City

Fairmont,  
Maxton,  
Pembroke,  
Red Springs,  
Rowland,  
St. Pauls  
Reidsville,  
Eden,  
Madison

Mt. Airy  
High Point  
Kannapolis

Liberty

Hamlet  
Southern  
Pines  
Kernersville

ThomasvilleMooresville

Catawba	6	10	Hickory
Mecklenburg	15	26	
Gaston	11	20	
Cleveland	5	8	
Lincoln	4	6	
Buncombe	6	15	
Henderson	4	6	
McDowell	3	5	
Polk	3	4	
Rutherford	6	8	
Transylvania	2	4	
Cherokee	3	4	
Clay	1	2	
Graham	2	3	
Haywood	5	7	Canton
Jackson	3	4	
Macon	3	4	
Swain	2	3.	

(d) The Governor shall appoint the additional district court judge for District Court District 9B authorized by subsection (c) of this section. A successor shall be elected in the 1998 general election for a four-year term commencing the first Monday in December 1998.

(e) The Governor shall appoint the additional district court judge for District Court District 29 authorized by subsection (c) of this section. A successor shall be elected in the 1998 general election for a four-year term commencing the first Monday in December 1998.

(f) G.S. 7A-45.1 is amended by adding a new subsection to read:

"(a1) Effective October 1, 1995, the Governor may appoint two special superior court judges to serve terms expiring September 30, 2000. Successors to the special superior court judges appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district."

(g) Notwithstanding any other provision of law, any person who has previously served as a magistrate is eligible to be appointed as a magistrate.

(h) Subsections (c) and (d) of this section become effective January 1, 1996, or 15 days after the date upon which those subsections are approved under Section 5 of the Voting Rights Act of 1965, whichever is later, except that the additional district court judgeship for district court district 29 authorized by subsection (c) of this section becomes effective January 1, 1996. Subsection (f) of this section becomes effective October 1, 1995. Subsection (g) of this section is effective upon ratification. The remainder of this section becomes effective January 1, 1996.

(i) The provisions of this section are severable. If any provision of this section is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the section that can be given effect without the invalid provision.



Requested by: Representatives Justus, Thompson, Mercer, Senator Ballance  
**RECIDIVISM STUDY**

**Sec. 21.2.** The North Carolina Sentencing and Policy Advisory Commission shall contract with an external consultant to study recidivism of criminal offenders assigned to community correctional programs or released from prison. The community correctional programs to be studied shall include Treatment Alternatives to Street Crime (TASC), Community Penalties Program, Community Service, and all supervised probation and parole programs. The study shall identify those offenders rearrested within two years or more after assignment to a program or release from prison.

Of the funds appropriated to the Judicial Department for the 1995-97 biennium, the Department may use up to fifty thousand dollars (\$50,000) during the 1995-97 biennium to contract with an external consultant for this study. The Department shall provide the consultant's report to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by May 1, 1996.

Requested by: Senators Ballance, Rand Representatives Justus, Thompson, Kiser

**INDIGENT PERSONS' ATTORNEY FEE FUND**

**Sec. 21.3.** (a) Effective July 1, 1995, the Administrative Office of the Courts shall each year of the 1995-97 biennium reserve funds for capital cases and for transcripts, professional examinations, and expert witness fees from the Indigent Persons' Attorney Fee Fund. The remaining available funds in the Indigent Persons' Attorney Fee Fund shall be allotted for adult, juvenile, and guardian ad litem cases for the 1995-96 and 1996-97 fiscal years to each judicial district in which the superior and district court districts are coterminous, and otherwise by county, according to the caseload of indigent persons who were not represented by the public defender in the districts or counties during 1994-95 and 1995-96 respectively.

The Administrative Office of the Courts shall notify all senior resident superior court judges, all chief district court judges, and the clerk of superior court within the district or county immediately after the allotment is made and shall provide a monthly report on the status of the allotment for the district or county.

The senior resident superior court judge and the chief district court judge of each district or county shall ask all judges holding court within the district or county: (i) to take into consideration the amount of money allotted at the beginning of the fiscal year and the amount of money remaining in the allotment when they award counsel fees to attorneys of indigent persons, and (ii) to make an effort to award fees equally and justly for legal services provided. The clerk of superior court for each county shall ensure that all judges holding court within the county receive this request from the senior resident superior court judge and the chief district court judge.

(b) If the funds allotted pursuant to subsection (a) of this section are depleted in a district or county prior to the end of the fiscal year, the Administrative Office of the Courts shall allot any available funds from the

reserve fund specified in subsection (a) or from unanticipated receipts. However, if necessary and appropriate due to unusual and unanticipated circumstances occurring in the current year, the Administrative Office of the Courts may allocate available funds to a district or county in a manner calculated to result in the reasonably fair distribution of remaining funds.

(c) If funds allocated in subsections (a) and (b) are depleted in a district or county prior to the end of the fiscal year, the Administrative Office of the Courts shall allot available funds from the Public Defender program.

(d) If the funds allotted pursuant to subsections (a), (b), and (c) of this section are depleted in a district or county prior to the end of the fiscal year, the Administrative Office of the Courts is authorized to transfer funds between districts or counties only if the Administrative Office of the Courts determines that the funds transferred will not be needed to meet the obligations incurred by the Indigent Persons' Attorney Fee Fund for the county or district from which the funds are transferred for the fiscal year.

Requested by: Representatives Justus, Thompson, Kiser, Senators Ballance, Rand

#### **ASSISTANT PUBLIC DEFENDERS**

**Sec. 21.4.** From funds appropriated to the Indigent Persons' Attorney Fee Fund for the 1995-97 biennium, the Administrative Office of the Courts may use up to one hundred eighty-eight thousand nine hundred ninety-four dollars (\$188,994) in the 1995-96 fiscal year, and up to one hundred eighty-six thousand one hundred seventy-one dollars (\$186,171) in the 1996-97 fiscal year for salaries, benefits, and related expenses to establish up to three new assistant public defenders.

Requested by: Representatives Justus, Thompson, Redwine, Kiser, Senators Ballance, Rand

#### **DISPUTE SETTLEMENT FUNDS**

**Sec. 21.5.** (a) Of the three hundred sixty-three thousand five hundred dollars (\$363,500) appropriated in this act for each fiscal year of the 1995-97 biennium for new and additional funding for dispute settlement centers, twenty-five thousand dollars (\$25,000) each shall be allocated for new funding for the Blue Ridge Dispute Settlement Center and the Sandhills Mediation Center, fifteen thousand dollars (\$15,000) each shall be allocated for new funding for the Duplin County Dispute Settlement Center and Mediation Services of Rockingham County, and ten thousand dollars (\$10,000) shall be allocated for new funding for the Dispute Settlement Center of Moore County. The remaining funds for each fiscal year shall be allocated for additional funding as follows:

- (1) \$5,000 for the Alamance County Dispute Settlement Center;
- (2) \$25,000 for the Charlotte/Mecklenburg Community Relations Committee/Dispute Settlement Program;
- (3) \$10,000 for the Cumberland County Dispute Resolution Center;
- (4) \$10,000 for The Dispute Settlement Center of Cape Fear;
- (5) \$20,000 for the Dispute Settlement Center of Durham, Inc.;
- (6) \$13,500 for the Henderson County Dispute Settlement Center;

- (7) \$10,000 for The Mediation Center in Buncombe County;
- (8) \$30,000 for the Mediation Center of Eastern Carolina to expand into Craven and Carteret Counties;
- (9) \$15,000 for the Mediation Center of Gaston County, Inc.;
- (10) \$15,000 for Mediation Services of Forsyth County;
- (11) \$23,000 for Mediation Services of Guilford County;
- (12) \$44,000 for the Mountain Dispute Settlement Center;
- (13) \$25,000 for the Orange County Dispute Settlement Center;
- (14) \$13,000 for the Transylvania Dispute Settlement Center; and
- (15) \$15,000 for the Robeson County Dispute Resolution Center.

(b) The provisions of subsection (c) of Section 21.5 of Chapter 324 of the 1995 Session Laws shall not apply to the Robeson County Dispute Resolution Center during the 1995-97 biennium.

Requested by: Senators Ballance, Rand. Representatives Justus, Thompson, Kiser

### **DRUG TREATMENT COURTS/FUNDS IN RESERVE**

**Sec. 21.6.** (a) Chapter 7A of the General Statutes is amended by adding a new Subchapter to read:

#### "SUBCHAPTER XIV. DRUG TREATMENT COURTS.

##### "ARTICLE 62.

##### "North Carolina Drug Treatment Court Act.

##### "§ 7A-790. Short title.

This Article shall be known and may be cited as the 'North Carolina Drug Treatment Court Act of 1995'.

##### "§ 7A-791. Purpose.

The General Assembly recognizes that a critical need exists in this State for criminal justice system programs that will reduce the incidence of drug use and drug addiction and crimes committed as a result of drug use and drug addiction. It is the intent of the General Assembly by this Article to create a program to facilitate the creation of drug treatment court pilot programs in a minimum of two judicial districts.

##### "§ 7A-792. Goals.

The goals of the drug treatment court programs funded under this Article include the following:

- (1) To reduce alcoholism and other drug dependencies among offenders;
- (2) To reduce recidivism;
- (3) To reduce the drug-related court workload;
- (4) To increase the personal, familial, and societal accountability of offenders; and
- (5) To promote effective interaction and use of resources among criminal justice personnel and community agencies.

##### "§ 7A-793. Establishment of Program.

The North Carolina Drug Treatment Court Program is established in the Administrative Office of the Courts to facilitate the creation of drug treatment court programs and the funding of pilot drug treatment court programs. Drug treatment court programs funded pursuant to this Article shall be operated consistent with the guidelines promulgated by the Director of the

Administrative Office of the Courts in consultation with the State Drug Treatment Court Advisory Committee established in G.S. 7A-795. In promulgating the guidelines, the Director and the Advisory Committee shall consider the Substance Abuse and the Courts Action Plan and other recommendations of the Substance Abuse and the Courts State Task Force.

"§ 7A-794. Fund administration.

The Drug Treatment Court Program Fund is created in the Administrative Office of the Courts and is administered by the Director of the Administrative Office of the Courts in consultation with the State Drug Treatment Court Advisory Committee. The Director of the Administrative Office of the Courts shall award grants from this Fund and implement drug treatment court programs in a minimum of two judicial districts. Grants shall be awarded based upon the general guidelines set forth by the Director of the Administrative Office of the Courts and the State Drug Treatment Court Advisory Committee.

"§ 7A-795. State Drug Treatment Court Advisory Committee.

The State Drug Treatment Court Advisory Committee is established to develop guidelines for the drug treatment court program and to monitor programs wherever they are implemented. The Committee shall be chaired by the Director of the Administrative Office of the Courts or the Director's designee and shall consist of not less than seven members appointed by the Director and broadly representative of the courts, corrections, and substance abuse treatment communities.

"§ 7A-796. Local drug treatment court management committee.

Each judicial district choosing to establish a drug treatment court or applying to participate in a funded pilot program shall form a local drug treatment court management committee, consisting of the following persons, appointed by the senior resident superior court judge with the concurrence of the district attorney for that district:

- (1) A judge of the superior court;
- (2) A judge of the district court;
- (3) A district attorney or assistant district attorney;
- (4) A public defender or assistant public defender in judicial districts served by a public defender;
- (5) A member of the private criminal defense bar;
- (6) A clerk of superior court;
- (7) The trial court administrator in judicial districts served by a trial court administrator;
- (8) A probation officer;
- (9) A local law enforcement officer;
- (10) A representative of the local community college;
- (11) A representative of the treatment providers;
- (12) The local program director provided for in G.S. 7A-798; and
- (13) Any other persons selected by the local management committee.

The local drug treatment court management committee shall develop local guidelines and procedures, not inconsistent with the State guidelines, that are necessary for the operation and evaluation of the local drug treatment court.

"§ 7A-797. Eligible population; drug treatment court procedures.



The Director of the Administrative Office of the Courts, in conjunction with the State Drug Treatment Court Advisory Committee, shall develop criteria for eligibility and other procedural and substantive guidelines for drug treatment court operation.

"§ 7A-798. Drug treatment court grant application; local program director.

(a) Grant applications for the pilot programs shall be submitted to the Director of the Administrative Office of the Courts, in such form and with such information as the Director may require consistent with the provisions of this Article. Grants shall be awarded to two or more judicial districts that submit the most comprehensive and feasible plans for the implementation and operation of a drug treatment court. The Director shall award and administer grants in accordance with any laws made for that purpose, including appropriations acts and provisions in appropriations acts, and may adopt rules for the implementation, operation, and monitoring of grant-funded programs.

(b) Grant applications shall specify a local program director who shall be responsible for local administration of the project. Grant funds may be used to fund a full-time or part-time local program director position. The local program director may be an employee of the grant recipient, an employee of the court, or a grant-established position under the senior resident superior court judge or chief district court judge.

"§ 7A-799. Treatment not guaranteed.

Nothing contained in this Article shall confer a right or an expectation of a right to treatment for a defendant or offender within the criminal justice system.

"§ 7A-800. Payment of costs of treatment program.

Each defendant shall contribute to the cost of the substance abuse treatment received in the drug treatment court program, based upon guidelines developed by the local drug treatment court management committee.

"§ 7A-801. Plan for evaluation.

Each grant application requesting funding for the pilot program shall include a method for evaluating the pilot program's effectiveness, based upon the goals stated in G.S. 7A-792. Each funded program shall submit evaluation reports to the Administrative Office of the Courts as requested. Additionally, the Administrative Office of the Courts shall be responsible for developing an evaluation model on the State level to compare the effectiveness of all pilot programs and shall submit a report to the General Assembly by May 1, 1998."

(b) Funds to implement and evaluate the pilot programs established under the North Carolina Drug Treatment Court Act shall be allocated from the reserve of eight hundred thousand dollars (\$800,000) created in Section 41 of Chapter 24 of the Session Laws of the 1994 Extra Session. These funds shall be used primarily to provide substance abuse treatment, but the sum of two hundred thousand dollars (\$200,000) for the 1995-96 fiscal year shall be used to fund systemwide equipment needs and the sum of forty-three thousand seven hundred seventy-five dollars (\$43,775) for the 1995-96 fiscal year and the sum of fifty-two thousand five hundred fifty-one thousand



dollars (\$52,551) for the 1996-97 fiscal year may be used to fund one program administrator position.

(c) Subsection (a) of this section becomes effective July 1, 1995, and expires June 30, 1998. The remainder of this section becomes effective October 1, 1995.

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Kiser

### ADD ADDITIONAL ASSISTANT DISTRICT ATTORNEYS

**Sec. 21.7.** G.S. 7A-60(a) reads as rewritten:

"(a) The counties of the State are organized into prosecutorial districts, and each district has the counties and the number of full-time assistant district attorneys set forth in the following table:

Prosecutorial District	Counties	No. of Full-Time Asst. District Attorneys
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	<u>7</u> 8
2	Beaufort, Hyde, Martin, Tyrrell, Washington	4
3A	Pitt	<u>6</u> 7
3B	Carteret, Craven, Pamlico	6
4	Duplin, Jones, Onslow, Sampson	10
5	New Hanover, Pender	9
6A	Halifax	3
6B	Bertie, Hertford, Northampton	3
7	Edgecombe, Nash, Wilson	10
8	Greene, Lenoir, Wayne	8
9	Franklin, Granville, Vance, Warren	<u>7</u> 8
9A	Person, Caswell	2
10	Wake	<u>19</u> 20
11	Harnett, Johnston, Lee	<u>9</u> 10
12	Cumberland	<u>12</u>
13	Bladen, Brunswick, Columbus	6
14	Durham	9
15A	Alamance	6
15B	Orange, Chatham	5
16A	Scotland, Hoke	3
16B	Robeson	7
17A	Rockingham	4
17B	Stokes, Surry	4
18	Guilford	<u>17</u> 18
19A	Cabarrus	4
19B	Montgomery, Randolph	5
19C	Rowan	4

20	Anson, Moore, Richmond, Stanly, Union	41 <u>12</u>
21	Forsyth	12
22	Alexander, Davidson, Davie, Iredell	11
23	Alleghany, Ashe, Wilkes, Yadkin	4
24	Avery, Madison, Mitchell, Watauga, Yancey	3
25	Burke, Caldwell, Catawba	11
26	Mecklenburg	<del>23</del> <u>24</u>
27A	Gaston	8
27B	Cleveland, Lincoln	5
28	Buncombe	8
29	Henderson, McDowell, Polk, Rutherford, Transylvania	8
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain."	6

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Kiser

#### **MEDIATED SETTLEMENT CONFERENCE FUNDS**

**Sec. 21.8.** Of the funds appropriated to the Judicial Department for the 1995-96 fiscal year, the sum of sixty thousand seventeen dollars (\$60,017) shall be used to support the operation of the Dispute Resolution Commission to carry out the Mediated Settlement Conferences program. Any fees collected pursuant to G.S. 7A-38.2(d) shall be placed in a reserve and may not be expended until the 1996-97 fiscal year.

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Kiser

#### **CRIMINAL CASE MANAGEMENT FUNDS**

**Sec. 21.10.** Of the funds appropriated to the Judicial Department for the 1995-97 biennium, the Administrative Office of the Courts shall use the sum of fifty thousand dollars (\$50,000) for the 1995-96 fiscal year and the sum of fifty thousand dollars (\$50,000) for the 1996-97 fiscal year to establish a criminal case management pilot program in the Twelfth and Thirteenth Judicial Districts to help reduce the backlog of court cases and resolve new court cases quicker. A case management facilitator position shall be added to the district attorney's office in both of those judicial districts to help implement the pilot program and the positions shall be filled after consultation with the Senior Resident Superior Court Judges in both of those judicial districts.

The Administrative Office of the Courts shall report by May 1, 1996 to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the implementation of the pilot program.

**PART 22. DEPARTMENT OF JUSTICE**

Requested by: Senators Ballance, Rand, Plyler, Perdue, Odom,  
Representatives Justus, Thompson, Kiser, Holmes, Creech, Esposito

**DEPARTMENT OF JUSTICE RECORD CHECKS STAFF AND FIREARMS TRAINING FUNDS**

**Sec. 22.** (a) Of the funds appropriated in this act to the Department of Justice for the 1995-97 biennium, the sum of two hundred ninety-seven thousand four hundred seventy-three dollars (\$297,473) may be used to add nine positions in the State Bureau of Investigation to facilitate record checks that are performed as a result of legislation ratified during the 1995 Session.

(b) The Department of Justice may use, for each year of the 1995-97 biennium, the sum of up to three hundred seventy-nine thousand two hundred eighty-seven dollars (\$379,287) to add 15 positions in the State Bureau of Investigation to facilitate record checks for concealed weapons permits. The Office of State Budget and Management may adjust the allotment of appropriations to the Department of Justice until receipts are realized. If the number of criminal record checks performed by the Department of Justice falls below the level of 10,000 checks per one and one-half positions, the number of positions performing records checks shall be reduced by the Department accordingly.

(c) The Department of Justice may charge a fee for the reasonable costs of the firearms safety courses required for a concealed weapon permit. The Department of Justice may use up to one hundred thousand dollars (\$100,000) of its State appropriations to pay the costs of developing standards and implementing firearms safety courses until receipts from the courses are sufficient and available to pay the cost of those courses.

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Kiser

**CONCEALED WEAPON PERMITS**

**Sec. 22.1.** (a) G.S. 14-415.19 as enacted by Chapter 398 of the 1995 Session Laws reads as rewritten:

"§ 14-415.19. *Fees.*

(a) The permit fees assessed under this Article are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer ~~to be used to pay the costs of the criminal record checks and investigations required under this Article,~~ to be remitted or credited by the county finance officer in accordance with the provisions of this subsection. The permit fees are as follows:

Application fee .....	\$50.00	\$80.00
Renewal fee .....	\$50.00	\$80.00
Duplicate permit fee .....	\$15.00	

The county finance officer shall remit sixty dollars (\$60.00) of each application or renewal fee to the North Carolina Department of Justice for the costs of State and federal criminal record checks performed in connection with processing applications and for the implementation of the provisions of this Article. The remaining twenty dollars (\$20.00) of each application or renewal fee shall be used by the sheriff to pay the costs of

administering this Article and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only.

(b) An additional fee, not to exceed ten dollars (\$10.00), shall be collected by the sheriff from an applicant for a permit to pay for the costs of processing the applicant's fingerprints. This fee shall be retained by the ~~law enforcement office that processes the fingerprints.~~ sheriff."

(b) G.S. 14-415.13(a) reads as rewritten:

"(a) A person shall apply to the sheriff of the county in which the person resides to obtain a concealed handgun permit. The applicant shall submit to the sheriff all of the following:

(1) An application, completed under oath, on a form provided by the sheriff.

(2) A nonrefundable permit fee.

(3) A full set of fingerprints of the applicant administered by ~~a law enforcement agency of this State,~~ the sheriff.

(4) An original certificate of completion of an approved course, adopted and distributed by the North Carolina Criminal Justice Education and Training Standards Commission, signed by the certified instructor of the course attesting to the successful completion of the course by the applicant which shall verify that the applicant is competent with a handgun and knowledgeable about the laws governing the carrying of a concealed handgun and the use of deadly force.

(5) A release, in a form to be prescribed by the Administrative Office of the Courts, that authorizes and requires disclosure to the sheriff of any records concerning the mental health or capacity of the applicant."

(c) G.S. 14-415.11(b) reads as rewritten:

"(b) The sheriff shall issue a permit to carry a concealed handgun to a person who qualifies for a permit under G.S. 14-415.12. The permit shall be valid throughout the State for a period of ~~three~~ four years from the date of issuance."

(d) The Department of Justice shall report quarterly to the Joint Legislative Commission on Governmental Operations, the Co-chairs of the Joint Appropriations Committee, and the Co-chairs of the Subcommittees on Justice and Public Safety on the receipts, costs for, and number of criminal record checks performed in connection with applications for concealed weapons permits. The report by the Department of Justice shall also include information on the number of applications received and approved for firearms safety courses.

(e) This section becomes effective December 1, 1995.

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Kiser

#### CONCEALED WEAPON PERMIT RENEWAL

Sec. 22.2. (a) G.S. 14-415.13(b) reads as rewritten:

"(b) The sheriff shall submit the fingerprints to the State Bureau of Investigation for a records check of State and national databases. The State Bureau of Investigation shall submit the fingerprints to the Federal Bureau

of Investigation as necessary. The cost of processing the set of fingerprints shall be charged to an applicant as provided by G.S. 14-415.19. ~~The fingerprints of an applicant who is issued a permit shall be retained for future use in the event the permit is renewed, and shall be retained until any valid permit expires and is not renewed.~~"

(b) G.S. 14-415.16 reads as rewritten:

"§ 14-415.16. *Renewal of permit.*

The holder of a permit shall apply to renew the permit at least 30 days prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, a notarized affidavit stating that the permittee remains qualified under the criteria provided in this Article, a newly administered full set of the permittee's fingerprints, and a renewal fee. Upon receipt of the completed renewal application and application, including the permittee's fingerprints, and the appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit within 30 days of its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the permit."

(c) This section becomes effective December 1, 1995.

Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Kiser

#### **REIMBURSEMENT FOR UNC BOARD OF GOVERNORS LEGAL REPRESENTATION**

**Sec. 22.4.** The Department of Justice shall be reimbursed by the Board of Governors of The University of North Carolina for two Attorney III positions to provide legal representation to The University of North Carolina system.

### **PART 23. DEPARTMENT OF HUMAN RESOURCES**

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford  
**PHYSICIAN SERVICES**

**Sec. 23.1.** With the approval of the Office of State Budget and Management, the Department of Human Resources may use funds appropriated in this act for across-the-board salary increases and performance pay to offset similar increases in the costs of contracting with private and independent universities for the provision of physician services to clients in facilities operated by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. This offsetting shall be done in the same manner as is currently done with constituent institutions of The University of North Carolina.

Requested by: Representatives Gardner, Hayes, Nyc, Senators Martin of Guilford, Forrester



**AREA AUTHORITY ACCOUNTABILITY/STATE ACTION**

**Sec. 23.2.** Part 2 of Article 4 of Chapter 122C of the General Statutes is amended by adding the following new sections to read:

"§ 122C-124. Area Authority funding suspended.

The Secretary of the Department of Human Resources may suspend funding to any area authority with a revenue or expenditure budget variance of ten percent (10%) or a significant deterioration in the fund balance of the authority's general fund. A significant deterioration of fund balance is defined as a twenty-five percent (25%) decrease in the balance from one fiscal year to the next without the prior approval of the Department. Area authorities shall report any such revenue or expenditure variance or deterioration in fund balance to the Department of Human Resources within 30 days of its occurrence. In the event that funding is suspended, the Department of Human Resources may contract with, and make payments of Department funds on an interim basis directly to, a contract provider of the area authority to avoid the disruption of direct services to clients.

Upon suspension of funding, the Department shall, in conjunction with the area authority, develop and implement a corrective plan of action and provide notification to the area authority's board of directors of the plan. The Department shall also keep the county board of commissioners and the area authority's board of directors informed of any ongoing concerns or problems with the area authority's finances.

"§ 122C-125. Area Authority financial failure; State assumption of financial control.

At any time that the Secretary of the Department of Human Resources determines that an area authority is in imminent danger of failing financially and of failing to provide direct services to clients, the Secretary may assume control of the financial affairs of the area authority and appoint an administrator to exercise the powers assumed. This assumption of control shall have the effect of divesting the area authority of its powers as to the adoption of budgets, expenditures of money, and all other financial powers conferred in the area authority by law. County funding of the area authority shall continue when the State has assumed control of the financial affairs of the area authority. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the area authority. The Secretary shall adopt rules to define imminent danger of failing financially and of failing to provide direct services to clients.

Upon assumption of financial control, the Department shall, in conjunction with the area authority, develop and implement a corrective plan of action and provide notification to the area authority's board of directors of the plan. The Department shall also keep the county board of commissioners and the area authority's board of directors informed of any ongoing concerns or problems with the area authority's finances.

"§ 122C-126. Area authority caretakers appointed.

In the event that an area authority fails to comply with the corrective plan of action required pursuant to G.S. 122C-124 when funding is suspended or pursuant to G.S. 122C-125 when the State assumes financial control of the area authority, the Secretary of the Department of Human Resources shall appoint a caretaker administrator, a caretaker board of directors, or both.

The Secretary may assign any of the powers and duties of the director of the area authority and of the board of directors and the caretaker board to the caretaker administrator as it deems necessary and appropriate to continue to provide direct services to clients, including the powers as to the adoption of budgets, expenditures of money, and all other financial powers conferred on the area authority by law. County funding of the area authority shall continue when the State has assumed control of the financial affairs of the area authority. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the area authority. The caretaker administrator and the caretaker board shall perform all of these powers and duties. The Secretary may terminate the contract of any director when it appoints a caretaker administrator. The Administrative Procedure Act shall apply to any such decision. Neither party to any such contract shall be entitled to damages.

After a caretaker board has been appointed, the General Assembly shall consider, at its next regular session, the future governance of the identified area authority."

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford  
**AREA AUTHORITY BOARD TRAINING**

Sec. 23.3. Part 2 of Article 4 of Chapter 122C of the General Statutes is amended by inserting the following new section to read:

"§ 122C-119.1. Area Authority board members' training.

All members of an area authority's board of directors shall receive initial orientation on board members' responsibilities and training provided by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Human Resources in fiscal management, budget development, and fiscal accountability. A member's refusal to be trained may be grounds for removal from the board."

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford  
**CONFIDENTIAL CLIENT INFORMATION SHARING CLARIFIED**

Sec. 23.4. G.S. 122C-53(i) reads as rewritten:

"(i) Upon the request of ~~a client~~, (i) a client who is an adult and who has not been adjudicated incompetent under Chapter 35A or former Chapters 33 or 35 of the General Statutes, or (ii) the legally responsible person for any other client, a facility shall disclose to an attorney confidential information relating to that client."

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford  
**NONMEDICAID REIMBURSEMENT CHANGES**

Sec. 23.5. Section 23.16 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 23.16. Providers of medical services under the various State programs, other than Medicaid, offering medical care to citizens of the State shall be reimbursed at rates no more than those under the North Carolina Medical Assistance Program. Hospitals that provide psychiatric inpatient care for Thomas S. class members or adults with mental retardation and

mental illness may be paid an additional incentive payment not to exceed fifteen percent (15%) of their regular daily per diem reimbursement.

The Department of Human Resources may reimburse hospitals at the full prospective per diem rates without regard to the Medical Assistance Program's annual limits on hospital days. When the Medical Assistance Program's per diem rates for inpatient services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Notwithstanding the provisions of paragraph one, the Department of Human Resources may negotiate with providers of medical services under the various Department of Human Resources programs, other than Medicaid, for rates as close as possible to Medicaid rates for the following purposes: contracts or agreements for medical services and purchases of medical equipment and other medical supplies. These negotiated rates are allowable only to meet the medical needs of its non-Medicaid eligible patients, residents, and clients who require such services which cannot be provided when limited to the Medicaid rate.

Maximum net family annual income eligibility standards for services in these programs shall be as follows:

Family Size	Medical Eye Care Adults	All Rehabilitation	Other
1	\$ 4,860	\$ 8,364	\$ 4,200
2	5,940	10,944	5,300
3	6,204	13,500	6,400
4	7,284	16,092	7,500
5	7,824	18,648	7,900
6	8,220	21,228	8,300
7	8,772	21,708	8,800
8	9,312	22,220	9,300

The eligibility level for children in the Medical Eye Care Program in the Division of Services for the Blind and for adults in the Clozaril Program in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall be one hundred percent (100%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year. Additionally, those adults enrolled in the Clozaril Program who become gainfully employed may continue to be eligible to receive State support, in decreasing amounts, for the purchase of Clozaril and related services up to three hundred percent (300%) of the poverty level.

State financial participation in the Clozaril Program for those enrollees who become gainfully employed is as follows:

Income (% of poverty)	State Participation	Client Participation
0-100%	100%	0%
101-120%	95%	5%

<u>121-140%</u>	<u>85%</u>	<u>15%</u>
<u>141-160%</u>	<u>75%</u>	<u>25%</u>
<u>161-180%</u>	<u>65%</u>	<u>35%</u>
<u>191-180%</u>	<u>65%</u>	<u>35%</u>
<u>201-220%</u>	<u>45%</u>	<u>55%</u>
<u>221-240%</u>	<u>35%</u>	<u>65%</u>
<u>241-260%</u>	<u>25%</u>	<u>75%</u>
<u>261-280%</u>	<u>15%</u>	<u>85%</u>
<u>281-300%</u>	<u>5%</u>	<u>95%</u>
<u>301%-over</u>	<u>0%</u>	<u>100%.</u>

The Department of Human Resources shall contract at, or as close as possible to, Medicaid rates for medical services provided to residents of State facilities of the Department."

Requested by: Senators Martin of Guilford, Forrester. Representatives Gardner, Hayes, Nye

**BLUE RIBBON TASK FORCE ON THE ISSUE OF THE POTENTIAL IMPACT OF FEDERAL BLOCK GRANT FUNDING AND OTHER FEDERAL ACTIONS ON MEDICAID IN NORTH CAROLINA.**

**Sec. 23.5A.** (a) There is established in the General Assembly a Blue Ribbon Task Force on the issue of the potential impact of federal block grant funding and other federal actions on Medicaid in North Carolina. The task force's study shall include:

- (1) An examination of the potential impacts on all of North Carolina's diverse populations effected by Medicaid and on all of North Carolina's organizations that provide programs and services related to Medicaid;
- (2) A determination of the fiscal and organizational adjustments that would need to be made to balance each of the potential impacts;
- (3) A recommendation of how best the General Assembly may address Medicaid and related issues; and
- (4) Any other Medicaid-related issues.

(b) The task force shall be composed of 12 members, six of whom shall be members of the House of Representatives at the time of their appointment, appointed by the Speaker of the House of Representatives, and six of whom shall members of the Senate at the time of their appointment, appointed by the President Pro Tempore of the Senate.

The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each select a member from their appointments to serve as cochair of the task force. Meetings shall be called at the will of the cochairs.

All members shall serve at the will of their appointing officer. Unless removed or unless resigning, members shall serve until the task force has made its report. Vacancies in membership shall be filled by the appropriate appointing officer.

(c) The task force may contract for consultant services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Administrative Officer shall assign professional and clerical

staff to assist in the work of the task force. The professional staff shall include the appropriate staff from the Fiscal Research, Research, and Legislative Drafting Divisions of the Legislative Services Office of the General Assembly. Clerical staff shall be furnished to the task force through the offices of House of Representatives and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the task force. The task force may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The task force, while in the discharge of official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information and any data within their possession or ascertainable from their records, and the power to subpoena witnesses.

Members of the task force shall receive per diem, subsistence, and travel allowances pursuant to G.S. 120-3.1 or Chapter 138, if a member leaves the General Assembly prior to the termination of the task force and remains on the task force.

(d) The task force shall report the results of its study, together with any legislative proposals and cost analyses, to the 1995 General Assembly, Regular Session 1996, within a week of its convening or to a special session of the 1995 General Assembly called to deal with federal block grant funding issues.

Requested by: Representatives Gardner, Hayes, Nye, Senators Martin of Guilford, Forrester  
**CONTINUATION BUDGET AFDC OPTION ELIMINATIONS**  
**EFFECTIVE DATE**

**Sec. 23.8.** The eliminations of the options in the AFDC Program affecting (i) AFDC for pregnant women in their third trimester, (ii) AFDC for 18 year old children who are in school, and (iii) State Supplemental Payments to AFDC households due to the retrospective budgeting requirement made by Chapter 324 of the 1995 Session Laws shall be effective August 1, 1995.

Requested by: Senators Martin of Guilford, Forrester, Representatives Gardner, Hayes, Nye

#### **CLARIFICATION OF LIMITATIONS ON STATE ABORTION FUND**

**Sec. 23.8A.** Subsection (b) of Section 23.27 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"(b) Eligibility for services of the State Abortion Fund shall be limited to women whose income is below the federal poverty level, as revised annually, ~~or~~ and who are not eligible for Medicaid. The State Abortion Fund shall be used to fund abortions only to terminate pregnancies resulting from cases of rape or incest, or to terminate pregnancies that, in the written opinion of one doctor licensed to practice medicine in North Carolina, endanger the life of the mother."



Requested by: Senators Martin of Guilford, Forrester, Representatives Gardner, Hayes, Nye

**CONTINUATION OF THE LEGISLATIVE STUDY OF THE EFFECT OF  
FEDERAL BUDGETARY POLICY ON WELFARE REFORM**

**Sec. 23.8B.** (a) The Legislative Study Commission on Welfare Reform, established by Section 47 of Chapter 24, 1993 Session Laws, Extra Session 1994, is continued. Subsections (d) and (e) of Section 47 of Chapter 24, 1993 Session Laws, Extra Session 1994, are repealed. The Commission's continued study shall focus on the effects of federal budgetary policy on welfare reform.

(b) The continued Legislative Study Commission on Welfare Reform shall submit a final report to the General Assembly on or before the first day of the 1995 General Assembly, Regular Session 1996, or on or before the first day of any extra session of the 1995 General Assembly called specifically to address welfare reform. Upon filing its final report, the Commission shall terminate, unless reauthorized by the General Assembly.

Requested by: Senators Martin of Guilford, Forrester, Representatives Gardner, Hayes, Nye

**CLARIFICATION OF AUTHORIZED ADDITIONAL USE OF HIV  
FOSTER CARE FUNDS**

**Sec. 23.9.** In addition to providing board payments to foster families of HIV-infected children as prescribed in Chapter 324 of the 1995 Session Laws, any additional funds remaining that were appropriated in Chapter 324 of the 1995 Session Laws for this purpose shall be used as follows:

- (1) To provide medical training in avoiding HIV transmission in the home; and
- (2) To transfer funds to the Department of Environment, Health, and Natural Resources to create three social work positions within the Department of Environment, Health, and Natural Resources, for the eastern part of North Carolina to enable the case-managing of families with HIV-infected children so that the children and the parents get access to medical care and so that child protective services issues are addressed rapidly and effectively. The three positions shall be medically based and located:
  - a. One in the northeast, covering Northampton, Hertford, Halifax, Gates, Chowan, Perquimans, Pasquotank, Camden, Currituck, Bertie, Wilson, Edgecombe, and Nash Counties;
  - b. One in the central east, covering Martin, Pitt, Washington, Tyrrell, Dare, Hyde, Beaufort, Jones, Greene, Craven, and Pamlico Counties; and
  - c. One in the southeast, covering New Hanover, Robeson, Brunswick, Carteret, Onslow, Lenoir, Pender, Duplin, Bladen, and Columbus Counties.

Requested by: Senators Perdue, Plyler, Odom, Martin of Guilford, Forrester, Representatives Gardner, Hayes, Nye

**ADULT CARE HOME REIMBURSEMENT RATE/ADULT CARE HOME  
ALLOCATION OF NONFEDERAL COST OF MEDICAID PAYMENTS**

**Sec. 23.10.** (a) Effective July 1, 1995, the maximum monthly rate for residents in adult care home facilities shall be nine hundred seventy-five dollars (\$975.00) per month for ambulatory residents and one thousand seventeen dollars (\$1,017) per month for semiambulatory residents.

(b) Effective August 1, 1995, the maximum monthly rate for residents in adult care home facilities shall be eight hundred forty-four dollars (\$844.00) per month per resident.

(c) Effective August 1, 1995, the Department of Human Resources may use the remaining funds available from the State/County Special Assistance appropriation to provide:

- (1) Needed Medicaid-covered services, specifically one hour of personal care services per day to all Medicaid-eligible residents and a maximum of 50 additional hours per month of personal care services for residents who require heavy care;
- (2) Funds to the area mental health authorities to provide wraparound services for adult home care residents with mental health conditions;
- (3) Funds for the implementation of the provisions of G.S. 131D-4.1 and G.S. 131D-4.2, including funds for necessary additional staff.

(d) The eligibility of Special Assistance recipients residing in adult care homes on August 1, 1995, shall not be affected by an income reduction in the Special Assistance eligibility criteria resulting from adoption of the Rate Setting Methodology Report and Related Services, providing these recipients are otherwise eligible.

(e) Effective August 1, 1995, the State shall pay fifty percent (50%) and the county shall pay fifty percent (50%) of the nonfederal costs of Medicaid services paid to adult care home facilities. As Medicaid personal care requirements increase, the county matching share shall be capped until it equals fifteen percent (15%) of the nonfederal Medicaid personal care requirements.

(f) To maximize Medicaid funding, the Department of Human Resources may take the temporary measures necessary to implement Medicaid funding during the period from August 1, 1995, through September 30, 1995. This authorization includes authorization to continue payment of State/County Assistance at the July 1995 rates until the Health Care Financing Administration approval of Medicaid personal care services with future recoupment from providers of an amount equal to the difference between the July 1995 rates and the August 1995 rates.

Requested by: Representatives Creech, Hayes, Gardner, Senator Martin of Guilford

#### **DOMICILIARY CARE REPORT**

**Sec. 23.11A.** The Secretary of the Department of Human Resources shall report quarterly, beginning October 1, 1995, to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office on the planning and status of implementation of the following:

- (1) Rate setting and financing of domiciliary care, including the use of Medicaid funds for personal care services:

- (2) Quality assurance and enhancement of domiciliary care, including case management for residents with special care needs, monitoring of domiciliary care facilities and specialized training of direct care staff; and
- (3) The process for the evaluation of the Domiciliary Care Financing and Quality Assurance Program.

Requested by: Senators Perdue, Plyler, Odom, Martin of Guilford, Forrester, Representatives Gardner, Hayes, Nye

**LIMITATION ON USE OF SPECIAL ALZHEIMER'S UNIT IN WILSON**

**Sec. 23.11B.** The Special Alzheimer's Unit established in Wilson by funds appropriated in this act shall serve only those clients who cannot be served by any similar private facility.

Requested by: Senators Perdue, Plyler, Odom, Martin of Guilford, Forrester, Representatives Gardner, Hayes, Nye, Holmes, Creech, Esposito

**ALZHEIMER'S ASSOCIATION OF NORTH CAROLINA FUNDS**

**Sec. 23.11C.** Of the funds appropriated to the Division of Aging, Department of Human Resources, in this act, the sum of one hundred thousand dollars (\$100,000) for the 1995-96 fiscal year shall be divided equally among the four chapters of the Alzheimer's Association of North Carolina, which are the Western Alzheimer's Chapter, the Southern Piedmont Alzheimer's Chapter, the Eastern Alzheimer's Chapter, and the Triad Alzheimer's Chapter. Each Chapter shall submit to the Division of Aging, for approval, a plan for the use of these funds, prior to receipt of these funds.

Requested by: Senators Perdue, Plyler, Odom, Martin of Guilford, Forrester, Representatives Gardner, Hayes, Nye, Holmes, Creech, Esposito

**IN-HOME AIDE FUNDS**

**Sec. 23.11D.** Of the funds appropriated to the Division of Aging, Department of Human Resources, in this act, the sum of five hundred thousand dollars (\$500,000) for the 1995-96 fiscal year and the sum of five hundred thousand dollars (\$500,000) for the 1996-97 fiscal year shall be allocated via the Home and Community Care Block Grant and used to fund in-home aide services and caregiver support services. These funds shall be used only for direct services.

Requested by: Senators Perdue, Plyler, Odom, Martin of Guilford, Forrester, Representatives Gardner, Hayes, Nye, Holmes, Creech, Esposito

**SERVICES TO OLDER ADULTS, ADULTS WITH DISABILITIES, AT-RISK CHILDREN AND YOUTH, AND FAMILIES**

**Sec. 23.11E.** Of the funds appropriated to the Department of Human Resources in this act for the 1995-96 fiscal year, the sum of two million dollars (\$2,000,000) shall be allocated as grants-in-aid to public and private nonprofit human services organizations for programs that provide services, including vocational rehabilitation services, to older adults, adults with disabilities, at-risk children and youth, and families. Prior to any allocation,

programs requesting funds shall submit a plan to the Department detailing the use of these funds.

Requested by: Senators Plyler, Perdue, Odom, Martin of Guilford, Representatives Gardner, Hayes, Nye

#### **INDEPENDENT LIVING REHABILITATION FUNDS**

**Sec. 23.11F.** (a) The Division of Vocational Rehabilitation Services, Department of Human Resources, shall expand the Independent Living Rehabilitation Program by establishing a new office in Stanly County in 1995-96, by providing for the service needs of eligible citizens served in existing program offices, and by providing adequate administrative support to existing offices and the new offices established pursuant to this section.

(b) Any funds appropriated in this act for the 1995-96 fiscal year for the purpose specified in subsection (a) of this section that are not required to be expended or encumbered for this purpose may be used during the 1995-96 fiscal year for one-time service purchases for Independent Living Rehabilitation Program clients waiting for services in existing offices.

Requested by: Representatives Dickson, Gardner, Hayes, Senators Martin of Guilford, Forrester

#### **PRIMARY CARE FUNDS**

**Sec. 23.12.** The Department of Human Resources may combine and allocate funds appropriated for the Office of Rural Health and Resource Development for recruitment and retention of primary care providers in medically underserved areas into one Provider Incentive Fund. Funds in the Provider Incentive Fund may be allocated for purposes of enhancing recruitment and retention of primary care providers in medically underserved areas and for other purposes related to the enhancement of health services to medically underserved communities.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

#### **MODIFIED WILDERNESS EDUCATION CAMP PROGRAM**

**Sec. 23.13.** Of the three million thirty-six thousand three hundred fifty-two dollars (\$3,036,352) appropriated in Chapter 324 of the 1995 Session Laws for two additional Wilderness Camps approved by the 1993 General Assembly, Extra Session 1994, one million five hundred eighteen thousand one hundred seventy-six dollars (\$1,518,176) shall be used to fund a Modified Wilderness Education Camp Program in the Department of Human Resources that shall emphasize education for juveniles under the age of 16 referred by the public schools. If the Modified Wilderness Education Camp is discontinued, funds for this purpose shall be directed to operate a traditional Wilderness Camp Program.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford

#### **DETENTION FACILITY CONSTRUCTION FUNDS**

**Sec. 23.15.** Of the funds appropriated to the Department of Human Resources in Chapter 24 of the 1993 Session Laws, Extra Session 1994, for construction of a 24-bed juvenile detention facility in Wake County, the Department of Human Resources may use the sum of one million six

hundred thousand dollars (\$1,600,000) to construct a 24-bed facility at any available location in the State.

Requested by: Senators Martin of Guilford, Forrester, Representatives Gardner, Hayes, Nye

### **FAMILY SUPPORT/DEAF AND HARD OF HEARING SERVICES CONTRACT**

**Sec. 23.17.** (a) Of the funds appropriated to the Division of Services for the Deaf and Hard of Hearing, Department of Human Resources, in Chapter 324 of the 1995 Session Laws for family support services, the sum of five hundred thousand dollars (\$500,000) for each fiscal year of the biennium shall be used to contract with a private, nonprofit corporation licensed to do business in North Carolina to perform those services currently being offered by the Family Resource Centers within the Division of Services for the Deaf and Hard of Hearing, including family support and advocacy services as well as technical assistance to professionals who work with families of hearing impaired children.

(b) The Office of State Budget and Management shall perform a performance audit of the private, nonprofit contract program at the end of this first year. In conducting the audit, the Office of State Budget and Management shall use the field work standards for performance audits as published by the Comptroller General of the United States. The Office of State Budget and Management shall report the results of this audit to the General Assembly, the Fiscal Research Division of the Legislative Services Office, and the Department of Human Resources by December 1, 1996.

(c) From funds appropriated in Chapter 324 of the 1995 Session Laws for the 1995-96 fiscal year to the Division of Services for the Deaf and Hard of Hearing, Department of Human Resources, for early intervention services, the Division shall develop, with participation from the Department of Public Instruction, the Department of Environment, Health, and Natural Resources, and Beginnings, Inc., (i) a comprehensive plan for early intervention, outreach, evaluation, and training to serve deaf education statewide and (ii) a plan to use the Central North Carolina School for the Deaf in Greensboro as a statewide resource.

Requested by: Representatives Gardner, Hayes, Nye, Senators Martin of Guilford, Forrester

### **DEAF EDUCATION IMPROVEMENTS**

**Sec. 23.18.** Of the funds appropriated to the Division of Services for the Deaf and Hard of Hearing, Department of Human Resources, in this act, the sum of five hundred thousand dollars (\$500,000) for the 1995-96 fiscal year and the sum of one million five hundred thousand dollars (\$1,500,000) for the 1996-97 fiscal year shall be used to improve the quality of public education that the State provides to deaf and hard of hearing children through the three North Carolina Schools for the Deaf in Morganton, Greensboro, and Wilson. These improvements shall include additional staff for curriculum enhancement, expansion of the extended school year program, and establishment of programs for behaviorally and



emotionally handicapped (BEH) deaf and hard of hearing children and for post-secondary enrichment.

Requested by: Senators Martin of Guilford, Forrester, Representatives Gardner, Hayes, Nye

**ANNUAL REPORT ON CARING PROGRAM FOR CHILDREN, INC.**

**Sec. 23.19A.** The Caring Program for Children, Inc., shall report annually by May 1 to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office, beginning with May 1, 1996, on its program for providing health care for children.

This report shall include the number of children served and the cost per child served.

Requested by: Senators Martin of Guilford, Forrester, Representatives Gardner, Hayes, Nye

**BRAILLE LITERACY FUNDS**

**Sec. 23.21.** Of the funds appropriated in this act to the Division of Services for the Blind, Department of Human Resources, the sum of one hundred seventy-five thousand dollars (\$175,000) for the 1995-96 fiscal year and the sum of one hundred seventy-five thousand dollars (\$175,000) for the 1996-97 fiscal year, shall be used for braille literacy, for up to four professionals certified as teachers of the visually impaired to assist local school administrative units primarily in rural areas of the State in providing appropriate services for students who are visually impaired.

Requested by: Senators Martin of Guilford, Forrester, Representatives Gardner, Hayes, Nye

**EMERGENCY BACKUP FOR HEART-LUNG BYPASS MACHINE**

**Sec. 23.22.** The acquisition of a second heart-lung bypass machine by a health service facility that has only one heart-lung bypass machine is exempt from review under Article 9 of Chapter 131E of the General Statutes, in order to ensure appropriate coverage for emergencies. In no instance shall both machines be scheduled for use simultaneously after the second machine is acquired.

Requested by: Senators Odom, Martin of Guilford, Forrester, Representatives Gardner, Hayes, Nye

**THOMAS S. LAWSUIT COMPLIANCE**

**Sec. 23.23.** The Department of Justice and the Department of Human Resources shall pursue all administrative and legal options necessary to enable the State to resolve the Thomas S. lawsuit in the most expeditious and cost-effective manner possible and to seek elimination of the necessity for oversight by a special master.

Requested by: Senators Odom, Martin of Guilford, Forrester, Representatives Gardner, Hayes, Nye

**MENTAL HEALTH STUDY COMMISSION STUDY OF FUNDING FOR SINGLE PORTAL OF ENTRY AND EXIT FOR DEVELOPMENTAL**

## DISABILITIES SERVICES OF AREA MENTAL HEALTH AUTHORITIES

**Sec. 23.24.** The Mental Health Study Commission shall study the issue of how the mandate for a single portal of entry and exit for developmental disabilities services of area mental health authorities should be funded. The Commission shall include the results of this study in its report to the 1995 General Assembly, Regular Session 1996.

Requested by: Senators Odom, Plyler, Perdue, Martin of Guilford, Forrester, Representatives Shubert, Holmes, Creech, Esposito, Gardner, Hayes, Nye

## MANDATE CRIMINAL HISTORY CHECKS OF CHILD DAY CARE PROVIDERS AND STUDY USE OF CENTRAL REGISTRY ON CHILD ABUSE AND NEGLECT

**Sec. 23.25.** (a) Article 7 of Chapter 110 of the General Statutes is amended by adding a new section to read:

"§ 110-90.2. Mandatory day care providers' criminal history checks.

(a) For purposes of this section:

- (1) 'Child day care', notwithstanding the definition in G.S. 110-86, means any child day care provided in child day care facilities and child day care homes, including child day care facilities and child day care homes required to be licensed or registered under this Article and nonregistered child day care homes approved to receive or receiving State or federal funds for providing child day care.
- (2) 'Child day care provider' means a person who:
  - a. Is employed by or seeks to be employed by a child day care facility or child day care home providing child day care as defined in subdivision (1) of this subsection; or
  - b. Owns or operates or seeks to own or operate a child day care facility or child day care home providing child day care as defined in subdivision (1) of this subsection.
- (3) 'Criminal history' means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children as set forth in G.S. 110-90.1. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of

G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(b) Effective January 1, 1996, the Department shall ensure that the criminal history of all child day care providers is checked and a determination is made of the child day care provider's fitness to have responsibility for the safety and well-being of children based on the criminal history. The Department shall ensure that child day care providers who have lived in North Carolina continuously for the previous five years are checked for county and State criminal histories. The Department shall ensure that all other child day care providers are checked for county, State, and national criminal histories. The Department may prohibit a child day care provider from providing child day care if the Department determines that the child day care provider is unfit to have responsibility for the safety and well-being of children based on the criminal history, in accordance with G.S. 110-90.1.

(c) The Department of Justice shall provide to the Division of Child Development, Department of Human Resources, the criminal history from the State and National Repositories of Criminal Histories of any child day care provider as requested by the Division.

The Division shall provide to the Department of Justice, along with the request, the fingerprints of the provider to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories signed by the child day care provider to be checked. The fingerprints of the provider shall be forwarded to the State Bureau of Investigation for a search of their criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

At the time of application the day care provider whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

### 'NOTICE

#### CHILD DAY CARE PROVIDER MANDATORY CRIMINAL HISTORY CHECK

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED ON ALL PERSONS WHO PROVIDE CHILD DAY CARE IN A LICENSED OR REGISTERED CHILD DAY CARE FACILITY, AND ALL PERSONS PROVIDING CHILD DAY CARE IN NONREGISTERED CHILD DAY CARE HOMES THAT RECEIVE STATE OR FEDERAL FUNDS.

"Criminal history" includes county, state, and federal convictions or pending indictments of any of the following crimes: the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A,

Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have responsibility for the safety and well-being of children, you shall have the opportunity to complete, or challenge the accuracy of, the information contained in the SBI or FBI identification records.

If you disagree with the determination of the North Carolina Department of Human Resources on your fitness to provide child day care, you may file a civil lawsuit in the district court in the county where you live.

Any child day care provider who intentionally falsifies any information required to be furnished to conduct the criminal history shall be guilty of a Class 2 misdemeanor.

Refusal to consent to a criminal history check is grounds for the Department to prohibit the child day care provider from providing child day care. Any child day care provider who intentionally falsifies any information required to be furnished to conduct the criminal history shall be guilty of a Class 2 misdemeanor.

(d) The Department shall notify in writing the child day care provider, and the child day care provider's employer, if any, of the determination by the Department whether the day care provider is qualified to provide child day care based on the child day care provider's criminal history. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the Department shall not release nor disclose any portion of the child day care provider's criminal history to the child day care provider or the child day care provider's employer. The Department shall also notify the child day care provider of the procedure for completing or challenging the accuracy of the criminal history and the child day care provider's right to contest the Department's determination in court.

A child day care provider who disagrees with the Department's decision may file a civil action in the district court of the county of residence of the child day care provider.

(e) All the information that the Department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the Department and those persons authorized under this section to receive the information. The Department may destroy the information after it is used for the purposes authorized by this section after one calendar year.



(f) There shall be no liability for negligence on the part of an employer of a child day care provider, an owner or operator of a child day care home or facility, a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Torts Claim Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(g) The child day care provider who seeks to be employed in child day care and the child day care provider who seeks to own or operate child day care shall pay the cost of the fingerprinting and the local check at the time the child day care provider seeks to provide child day care. The Department of Justice shall perform the State criminal history check. The Department of Human Resources shall bear the costs of obtaining the State criminal history check. If the Department determines that a day care provider who has lived continuously in the State less than five years is not disqualified based on the local and State criminal history record check, the Department shall request a criminal history check from the National Repository of Criminal History from the Department of Justice. The Department of Human Resources shall pay the cost for the national criminal history record check."

(b) Article 2 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"§ 114-19.5. Criminal record checks of child day care providers.

The Department of Justice may provide to the Division of Child Development, Department of Human Resources, the criminal history from the State and National Repositories of Criminal Histories in accordance with G.S. 110-90.2, of any child day care provider, as defined in G.S. 110-90.2. The Division shall provide to the Department of Justice, along with the request, the fingerprints of the provider to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the child day care provider to be checked. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 110-90.2(e). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

(c) The North Carolina Child Day Care Commission shall adopt rules to implement this section, in consultation with the Divisions of Child Development and Social Services of the Department of Human Resources, and the Division of Criminal Information of the Department of Justice.

(d) The Legislative Research Commission shall study the issue of using the records in the Central Registry on Child Abuse and Neglect for the purpose of conducting records checks of child day care providers. In its



study, the Commission shall evaluate current procedures for substantiating claims of child abuse or neglect and for maintaining records in the Central Registry, and shall determine what procedures should be implemented to (i) ensure that records are accurate, (ii) provide appropriate notice to interested parties, (iii) provide for expungement or correction of information, and (iv) provide for release of information. The Commission shall report its findings and recommendations to the 1997 General Assembly.

(e) Subsection (d) of this section is effective upon ratification. The remainder of this section becomes effective January 1, 1996, and as defined in this section, applies to all child day care providers providing child day care as of that date, to all child day care providers newly hired in child day care employment, and to all child day care providers newly owning or operating child day care, on or after that date.

Requested by: Senators Odom, Plyler, Perdue, Martin of Guilford, Forrester, Representatives Shubert, Holmes, Creech, Esposito, Gardner, Hayes, Nye

# **MANDATE CRIMINAL HISTORY CHECKS OF ALL FOSTER PARENTS IN LICENSED FAMILY FOSTER HOMES**

**Sec. 23.26.** (a) G.S. 131D-10.2 reads as rewritten:

"§ 131D-10.2. *Definitions.*

For purposes of this Article, unless the context clearly implies otherwise:

- (1) 'Adoption' means the act of creating a legal relationship between parent and child where it did not exist genetically.
- (2) 'Adoptive Home' means a family home approved by a child placing agency to accept a child for adoption.
- (3) 'Child' means an individual less than 18 years of age, who has not been emancipated under the provisions of Article 56 of Chapter 7A of the General Statutes.
- (4) 'Child Placing Agency' means a person authorized by statute or license under this Article to receive children for purposes of placement in residential group care, family foster homes or adoptive homes.
- (5) 'Children's Camp' means a residential child-care facility which provides foster care at either a permanent camp site or in a wilderness setting.
- (6) 'Commission' means the ~~Commission for Social Services~~, Social Services Commission.
- (6a) 'Criminal History' means a county, state, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27,

Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

- (7) 'Department' means the Department of Human Resources.
- (8) 'Family Foster Home' means the private residence of one or more individuals who permanently reside as members of the household and who provide continuing full-time foster care for a child or children who are placed there by a child placing agency or who provide continuing full-time foster care for two or more children who are unrelated to the adult members of the household by blood, marriage, guardianship or adoption.
- (9) 'Foster Care' means the continuing provision of the essentials of daily living on a 24-hour basis for dependent, neglected, abused, abandoned, destitute, orphaned, undisciplined or delinquent children or other children who, due to similar problems of behavior or family conditions, are living apart from their parents, relatives, or guardians in a family foster home or residential child-care facility. The essentials of daily living include but are not limited to shelter, meals, clothing, education, recreation, and individual attention and supervision.
- (9a) 'Foster Parent' means any individual who is 18 years of age or older who permanently resides in a family foster home licensed by the State and any such individual applying to provide family foster care.
- (10) 'Person' means an individual, partnership, joint-stock company, trust, voluntary association, corporation, agency, or other organization or enterprise doing business in this State, whether or not for profit.
- (11) 'Primarily Educational Institution' means any institution which operates one or more scholastic or vocational and technical education programs that can be offered in satisfaction of compulsory school attendance laws, in which the primary purpose of the housing and care of children is to meet their educational needs, provided such institution has complied with Article 39 of Chapter 115C of the General Statutes.
- (12) 'Provisional License' means a type of license granted by the Department to a person who is temporarily unable to comply with a rule or rules adopted under this Article.
- (13) 'Residential Child-Care Facility' means a staffed premise with paid or volunteer staff where children receive continuing full-time foster care. Residential child-care facility includes child-caring

institutions, group homes, and children's camps which provide foster care."

(b) Article 1A of Chapter 131D of the General Statutes is amended by adding a new section to read:

"§ 131D-10.3A. Mandatory criminal checks of foster parents.

(a) Effective January 1, 1996, the Department shall ensure that the criminal histories of all foster parents are checked and a determination of the foster parent's fitness to have responsibility for the safety and well-being of children based on the criminal history is made. The Department shall ensure that, as of the effective date of this act, all foster parents are checked for county, state, and federal criminal histories.

(b) The Department shall ensure that all foster parents who have been checked pursuant to subsection (a) of this section are checked annually upon relicensure for county and State criminal histories.

(c) The Department may prohibit a foster parent from providing foster care by denying or revoking the license to provide foster care if the Department determines that the foster parent is unfit to have responsibility for the safety and well-being of children based on the criminal history.

(d) The Department of Justice shall provide to the Department of Human Resources the criminal history of the foster parent obtained from the State and National Repositories of Criminal Histories as requested by the Department. The Department shall provide to the Department of Justice, along with the request, the fingerprints of the foster parent to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the foster parent to be checked. The fingerprints of the foster parent shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(e) At the time of application, the foster parent whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

'NOTICE

FOSTER PARENT  
MANDATORY CRIMINAL HISTORY CHECK

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED ON ALL PERSONS WHO PROVIDE FOSTER CARE IN A LICENSED FAMILY FOSTER HOME.

"Criminal history" includes any county, state, and federal convictions or pending indictments of any crime, of any of the following crimes: the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and

Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have responsibility for the safety and well-being of children, you shall have the opportunity to complete, or challenge the accuracy of, the information contained in the SBI or FBI identification records.

If you are denied licensure or your foster home license is revoked by the Department of Human Resources as a result of the criminal history check, you may request a hearing pursuant to Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

Any foster parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

Refusal to consent to a criminal history check is grounds for the Department to prohibit the foster parent from providing foster care. Any foster parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

(f) The Department shall notify in writing the foster parent and that individual's supervising agency of the determination by the Department of whether the foster parent is qualified to provide foster care based on the foster parent's criminal history. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the Department shall not release nor disclose any portion of the foster parent's criminal history to the foster parent. The Department shall also notify the foster parent of the foster parent's right to review the criminal history information, the procedure for completing or challenging the accuracy of the criminal history, and the foster parent's right to contest the Department's determination.

A foster parent who disagrees with the Department's decision may request a hearing pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(g) All the information that the Department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the Department and those persons authorized under this section to receive the information. The Department may destroy



the information after it is used for the purposes authorized by this section after one calendar year.

(h) There is no liability for negligence on the part of a supervising agency, or a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Torts Claim Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(i) The Department of Justice shall perform the State and national criminal history checks on foster parents and shall charge the Department of Human Resources a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. The Division of Social Services, Department of Human Resources, shall bear the costs of implementing this section."

(c) Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

*"§ 114-19.4. Criminal record checks of foster parents.*

The Department of Justice may provide to the Division of Social Services, Department of Human Resources, the criminal history from the State and National Repositories of Criminal Histories as defined in G.S. 131D-10.2(6a). The Division shall provide to the Department of Justice, along with the request, the fingerprints of the foster parent to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the foster parent to be checked. The fingerprints of the foster parent shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 131D-10.3A(g). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

(d) The Department of Human Resources and the Social Services Commission, upon consultation with the Division of Social Services of the Department of Human Resources and the Division of Criminal Information of the Department of Justice, shall adopt rules to implement this act.

(e) Subsections (a), (b), and (c) of this section become effective January 1, 1996, and apply to foster parents providing care on or after that date, to applicants for foster parent licenses on or after that date, and to foster parents whose licenses are being considered for renewal on or after that date. The remainder of this section is effective upon ratification.



**PART 23A. HEALTH CARE REFORM**

Requested by: Senators Martin of Guilford, Forrester, Perdue, Rand, Representatives Gardner, Hayes, Nye

**INSURANCE REFORM**

**Sec. 23A.1.** (a) Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-3-173. *Guaranteed renewability: provisions.*

(a) As used in this section:

(1) 'Health benefit plan' means a plan covering a group of persons and in the form of: an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by other federal law or regulation. 'Health benefit plan' does not mean any of the following kinds of insurance:

- a. Accident
- b. Credit
- c. Disability income
- d. Long-term or nursing home care
- e. Medicare supplement
- f. Specified disease
- g. Dental or vision
- h. Coverage issued as a supplement to liability insurance
- i. Workers' compensation
- j. Medical payments under automobile or homeowners
- k. Hospital income or indemnity
- l. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.

(2) 'Insurer' includes an entity subject to Articles 49, 65, or 67 of this Chapter.

(b) An insurer shall not modify any health benefit plan with respect to any insured through riders, endorsements, or otherwise, in order to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(c) Renewal of the health benefit plans shall be guaranteed by the insurer except:

- (1) For nonpayment of the required premium by the policyholder or contract holder.
- (2) For fraud or material misrepresentation by the policyholder or contract holder.
- (3) When the insurer ceases providing health benefit plans, provided notice of the decision to cease providing health benefit plans is given to the Commissioner and to the policyholder or contract

holder six months before the renewal of the health benefit plan would have taken effect."

(b) G.S. 58-50-130(a)(2) reads as rewritten:

"(2) In determining whether a preexisting-conditions provision applies to an eligible employee or to a dependent, all health benefit plans shall credit the time the person was covered under a previous group health benefit plan if the previous coverage was continuous to a date not more than 60 days before the effective date of the new coverage, exclusive of any applicable waiting period under the plan. As used in this subdivision with respect to previous coverage, 'health benefit plan' is not limited to plans subject to this act under G.S. 58-50-115."

(c) G.S. 58-51-80(b)(3) reads as rewritten:

"(3) Policies may contain a provision limiting coverage for preexisting conditions. Preexisting conditions must be covered no later than 12 months after the effective date of coverage. Preexisting conditions are defined as 'those conditions for which medical advice or treatment was received or recommended or which could be medically documented within the 12-month period immediately preceding the effective date of the person's coverage.' Preexisting conditions exclusions may not be implemented by any successor plan as to any covered persons who have already met all or part of the waiting period requirements under any ~~prior~~ group previous plan. Credit must be given for that portion of the waiting period which was met under the ~~prior~~ previous plan. As used in this subdivision, a 'previous plan' includes any health benefit plan provided by a health insurer, as those terms are defined in G.S. 58-51-115, or any government plan or program providing health benefits or health care. For employer groups of 50 or more persons; persons and for groups under subdivision (1a) of this subsection and under G.S. 58-51-81: In determining whether a preexisting condition provision applies to an eligible ~~employee~~ employee, association member, student, or to a dependent, all health benefit plans shall credit the time the person was covered under a previous group health benefit plan if the previous plan's coverage was continuous to a date not more than 60 days before the effective date of the new coverage, exclusive of any applicable waiting period under the new coverage."

(d) G.S. 58-51-80(h) reads as rewritten:

"(h) Nothing contained in this section ~~shall be deemed applicable~~ applies to any contract issued by any corporation defined in ~~Articles Article 65 and 66~~ of this Chapter. Subdivision (b)(3) of this section applies to MEWAs, as defined in G.S. 58-49-30(a)."

(e) G.S. 58-65-60(e)(2) reads as rewritten:

"(2) Employer master group contracts may contain a provision limiting coverage for preexisting conditions. Preexisting conditions must be covered no later than 12 months after the effective date of coverage. Preexisting conditions are defined as 'those conditions for which medical advice or treatment was received or

recommended or which could be medically documented within the 12-month period immediately preceding the effective date of the person's coverage.' Preexisting conditions exclusions may not be implemented by any successor plan as to any covered persons who have already met all or part of the waiting period requirements under any ~~prior group~~ previous plan. Credit must be given for that portion of the waiting period which was met under the ~~prior~~ previous plan. As used in this subdivision, a 'previous plan' includes any health benefit plan provided by a health insurer, as those terms are defined in G.S. 58-51-115, or any government plan or program providing health benefits or health care, except that nothing in this section shall apply to a guaranteed issue product designed for uninsurables. For employer groups of 50 or more persons: In determining whether a preexisting condition provision applies to an eligible employee or to a dependent, all health benefit plans shall credit the time the person was covered under a ~~previous group health benefit~~ previous plan if the previous plan's coverage was continuous to a date not more than 60 days before the effective date of the new coverage, exclusive of any applicable waiting period under the new coverage."

(f) G.S. 58-67-85(c) reads as rewritten:

"(c) Employer master group contracts may contain a provision limiting coverage for preexisting conditions. Preexisting conditions must be covered no later than 12 months after the effective date of coverage. Preexisting conditions are defined as 'those conditions for which medical advice or treatment was received or recommended or which could be medically documented within the 12-month period immediately preceding the effective date of the person's coverage.' Preexisting conditions exclusions may not be implemented by any successor plan as to any covered persons who have already met all or part of the waiting period requirements under any ~~prior group~~ previous plan. Credit must be given for that portion of the waiting period which was met under the ~~prior~~ previous plan. As used in this subsection, a 'previous plan' includes any health benefit plan provided by a health insurer, as those terms are defined in G.S. 58-51-115, or any government plan or program providing health benefits or health care. ~~For employer groups of 50 or more persons:~~ In determining whether a preexisting condition provision applies to an eligible employee or to a dependent, all health benefit plans shall credit the time the person was covered under a ~~previous group health benefit~~ previous plan if the previous plan's coverage was continuous to a date not more than 60 days before the effective date of the new coverage, exclusive of any applicable waiting period under the new coverage."

(g) G.S. 58-51-15(a)(2)b. reads as rewritten:

"b. ~~No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had~~

existed prior to the effective date of coverage of this policy. This policy contains a provision limiting coverage for preexisting conditions. Preexisting conditions must be covered no later than one year after the effective date of coverage. Preexisting conditions are defined as 'those conditions for which medical advice or treatment was received or recommended or that could be medically documented within the one-year period immediately preceding the effective date of the person's coverage.' Preexisting conditions exclusions may not be implemented by any successor plan as to any covered persons who have already met all or part of the waiting period requirements under any previous plan. Credit must be given for that portion of the waiting period that was met under the previous plan. As used in this policy, the term 'previous plan' includes any health benefit plan provided by a health insurer, as those terms are defined in G.S. 58-51-115, or any government plan or program providing health benefits or health care. In determining whether a preexisting condition provision applies to an insured person, all health benefit plans must credit the time the person was covered under a previous plan if the previous plan's coverage was continuous to a date not more than 60 days before the effective date of the new coverage, exclusive of any applicable waiting period under the new coverage."

Requested by: Senators Martin of Guilford, Forrester, Perdue, Rand, Plyler, Odom, Representatives Gardner, Hayes, Nye, Holmes, Creech, Esposito  
**NORTH CAROLINA HEALTH CARE REFORM COMMISSION**

**Sec. 23A.3** (a) G.S. 143-611 reads as rewritten:

"§ 143-611. *Commission established; members; terms of office; quorum; compensation.*

(a) Establishment. -- There is established the North Carolina Health Care Planning Reform Commission with the powers and duties specified in this Article. The Commission shall be located within the Office of the Secretary, Department of Human Resources, for organizational, budgetary, and administrative purposes.

(b) Membership and Terms. -- The Commission shall consist of ~~46~~ 14 members, as follows:

(1) ~~The Governor;~~

(2) ~~The Lieutenant Governor;~~

(3) ~~The Speaker of the House of Representatives;~~

(4) ~~The President Pro Tempore of the Senate;~~

(5) (1a) Five Six members appointed by the Speaker of the House of Representatives, at least two of whom are members of the House of Representatives at the time of appointment; appointed by the Speaker of the House of Representatives;

(6) (2a) Five Six members appointed by the President Pro Tempore of the Senate, at least two of whom are members of the



Senate at the time of the appointment; and ~~appointed by the President Pro Tempore of the Senate; and~~

~~(7)(3a)~~

The following nonvoting members, ex officio:

- a. The Secretary of the Department of Environment, Health, and Natural ~~Resources; Resources, or a designee thereof,~~ and
- b. The Secretary of the Department of Human ~~Resources, Resources, or a designee thereof.~~

Members shall serve two-year terms. Vacancies in membership shall be filled by the appointing authority in accordance with this section. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each appoint one of the Commission members to serve as cochair.

(c) Compensation. -- The Commission members shall receive no salary as a result of serving on the Commission but shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable.

(d) Meetings. -- ~~The Governor shall convene the Commission.~~ Commission shall be convened by the cochairs. Meetings shall be held as often as necessary, but not less than six times a year.

(e) Quorum. -- A majority of the voting members of the Commission shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Commission shall be necessary for action to be taken by the Commission."

(b) New terms of members of the North Carolina Health Care Reform Commission commence August 1, 1995 and expire on July 31, 1997.

(c) Wherever in the General Statutes the title North Carolina Health Planning Commission appears, the Revisor of Statutes shall substitute for it the title North Carolina Health Care Reform Commission.

(d) G.S. 143-612 is repealed.

(e) Article 65 of Chapter 143 of the General Statutes is amended by adding the following new section to read:

*"§ 143-612A. Powers and duties of the Commission.*

(a) Administrative Powers. -- The Commission shall have the following administrative powers:

- (1) To appoint a director, who shall be exempt from the State Personnel Act, and to employ other staff as it deems necessary, subject to the State Personnel Act, and to fix their compensation;
- (2) To enter into contracts to carry out the purposes of this Article;
- (3) To conduct investigations and inquiries and compel the submission of information and records the Commission deems necessary; and
- (4) To accept grants, contributions, devises, bequests, and gifts for the purpose of providing financial support to the Commission. Such funds shall be retained by the Commission.

(b) Monitoring. -- The Commission shall monitor health care reform efforts in the State and shall report to the Governor and the General Assembly on the following:

- (1) Cost-containment measures;



- (2) Accessibility to health care in rural and medically underserved areas;
  - (3) Availability of affordable health insurance for small businesses, including the Health Care Purchasing Alliances, to determine if these are meeting the health insurance needs of small business employers and their employees;
  - (4) Efforts to increase the purchasing power of government health programs; and
  - (5) The number of persons who lack access to primary care providers.
- (c) Study. -- The Commission shall study the following issues and may recommend to the General Assembly actions to address these issues:
- (1) The steps necessary to include the populations served by Medicaid, including a statement of any necessary federal waivers;
  - (2) The steps necessary to obtain an exemption from the federal Employee Retirement and Income Security Act (ERISA);
  - (3) Examine the roles of other existing publicly financed systems of health coverage such as Medicare, federal employee health benefits, health benefits for armed services members, the Veterans Administration, the CHAMPUS program (10 U.S.C. § 1071 et seq.), and any other health benefits currently mandated by State or federal law or funded by State agencies;
  - (4) The means by which the delivery of health care will ensure that the needs of special populations of eligible residents such as low-income persons, people living in rural and underserved areas, and people with disabilities and chronic or unusual medical needs will be met;
  - (5) The role of the existing county health care system in health care reform efforts;
  - (6) The appropriate means of financing medical education and medical research;
  - (7) The means by which North Carolina's need for long-term care services can best be met, including an examination of the appropriateness and availability of home- and community-based services;
  - (8) The impact on health care cost and efficiency of rule changes made by State and local government agencies pertaining to health care services. The study shall include the impact of the frequency of such rule changes;
  - (9) Privatization of administrative, clinical, and mental health functions performed by governmental agencies and entities, and the impact of regulation on the delivery of private health coverage and health services;
  - (10) The impact of federal budget decisions on underserved and underinsured populations;
  - (11) The need for additional primary care practitioners;
  - (12) The need for additional benefits and population-based services to be offered in the community, based on the established priorities for improving health status in the community;
  - (13) Incentives for increasing employer-based coverage;

- (14) Trends in the numbers of uninsured and underinsured persons and the barriers to access by these persons;
  - (15) Ways to maintain emergency medical services when hospital beds are reconfigured; and
  - (16) Study effectiveness of different types of preventive health services.
- (d) Other Duties. -- The Commission shall do the following and shall report to the Governor and the General Assembly on the progress of these activities:
- (1) Develop methods to ensure adequate primary care for all eligible residents and appropriate compensation for primary care services to achieve that end;
  - (2) Review and identify initiatives and incentives to enhance the practice of primary health care in rural areas of the State;
  - (3) Identify or develop incentives to encourage diversification in health care facilities in rural and other areas of the State; and
  - (4) Assess the impact of the locum tenens program; and
  - (5) Develop alternative ways of expanding coverage to uninsured persons.
- (e) Notwithstanding any other provision in this Article or Article 68A of Chapter 58 of the General Statutes, the Commission may develop its own health care proposals or plans or make any other recommendations to the General Assembly.
- (f) The Commission shall report to the General Assembly on or before April 1, 1996, on its duties and responsibilities under this section."

Requested by: Senators Martin of Guilford, Forrester, Perdue, Rand, Plyler, Representatives Gardner, Hayes, Nye

#### **HEALTH PROFESSIONAL LICENSING BOARD REPORTING**

**Sec. 23A.4.** Effective October 1, 1995, Chapter 93B of the General Statutes is amended by adding the following new section to read:

"§ 93B-12. Information from licensing boards having authority over health care providers.

(a) Every occupational licensing board having authority to license physicians, physician assistants, nurse practitioners, and nurse midwives in this State shall modify procedures for license renewal to include the collection of information specified in this section for each board's regular renewal cycle. The purpose of this requirement is to assist the State in tracking the availability of health care providers to determine which areas in the State suffer from inequitable access to specific types of health services and to anticipate future health care shortages which might adversely affect the citizens of this State. Occupational licensing boards, in consultation with the North Carolina Health Care Reform Commission, shall collect, report, and update the following information:

- (1) Area of health care specialty practice;
- (2) Address of all locations where the licensee practices; and
- (3) Other information the occupational licensing board in consultation with the North Carolina Health Care Reform Commission deems relevant to assisting the State in achieving the purpose set out in

this section, including social security numbers for research purposes only in matching other data sources.

(b) Every occupational licensing board required to collect information pursuant to subsection (a) of this section shall report and update the information on an annual basis to the North Carolina Health Care Reform Commission. The Commission shall provide this information to programs preparing primary care physicians, physicians assistants, and nurse practitioners upon request by the program and by the Board of Governors of The University of North Carolina. Information provided by the occupational licensing board pursuant to this subsection may be provided in such form as to omit the identity of the health care licensee."

Requested by: Senators Martin of Guilford, Forrester, Perdue, Rand, Plyler, Odom, Representatives Holmes, Creech, Esposito, Gardner, Hayes, Nye  
**PRIMARY CARE PROVIDERS**

**Sec. 23A.5.** G.S. 143-613 reads as rewritten:

"§ 143-613. Medical education; primary care ~~physicians~~, physicians and other providers.

(a) In recognition of North Carolina's need for primary care physicians, Bowman Gray School of Medicine and Duke University School of Medicine shall each prepare a plan with the goal of encouraging North Carolina residents to enter the primary care disciplines of general internal medicine, general pediatrics, family medicine, obstetrics/gynecology, and combined medicine/pediatrics and to strive to have at least fifty percent (50%) of North Carolina residents graduating from each school entering these disciplines. These schools of medicine shall present their plans to the Board of Governors of The University of North Carolina by April 15, 1994, 1996, and shall update and present their plans every two years thereafter. The Board of Governors shall report to the Joint Legislative Education Oversight Committee by May 15, 1994, 1996, and every two years thereafter on the status of these efforts to strengthen primary health care in North Carolina.

(b) The Board of Governors of The University of North Carolina shall set goals for the Schools of Medicine at the University of North Carolina at Chapel Hill and the School of Medicine at East Carolina University for increasing the percentage of graduates who enter residencies and careers in primary care. A minimum goal should be at least sixty percent (60%) of graduates entering primary care disciplines. Each school shall submit a plan with strategies to reach these goals of increasing the number of graduates entering primary care disciplines to the Board by April 15, 1994, 1996, and shall update and present the plans every two years thereafter. The Board of Governors shall report to the Joint Legislative Education Oversight Committee by May 15, 1994, 1996, and every two years thereafter on the status of these efforts to strengthen primary health care in North Carolina.

Primary care shall include the disciplines of family medicine, general pediatric medicine, general internal medicine, internal medicine/pediatrics, and obstetrics/gynecology.

(b1) The Board of Governors of The University of North Carolina shall set goals for State-operated health professional schools that offer training

programs for licensure or certification of physician assistants, nurse practitioners, and nurse midwives for increasing the percentage of the graduates of those programs who enter clinical programs and careers in primary care. Each State-operated health professional school shall submit a plan with strategies for increasing the percentage to the Board by April 15, 1996, and shall update and present the plan every two years thereafter. The Board of Governors shall report to the Joint Legislative Education Oversight Committee by May 15, 1996, and every two years thereafter on the status of these efforts to strengthen primary health care in North Carolina.

(c) The Board of Governors of The University of North Carolina shall further initiate whatever changes are necessary on admissions, advising, curriculum, and other policies for State-operated medical schools and State-operated health professional schools to ensure that larger proportions of medical students seek residencies and clinical training in primary care disciplines. The Board shall work with the Area Health Education Centers and other entities, adopting whatever policies it considers necessary to ensure that residency and clinical training programs have sufficient medical residency and clinical positions for medical school graduates in these primary care specialties. As used in this subsection, health professional schools are those schools or institutions that offer training for licensure or certification of physician assistants, nurse practitioners, and nurse midwives.

(d) The progress of the private and ~~public~~ State-operated medical schools and State-operated health professional schools towards increasing the number and proportion of graduates entering primary care shall be monitored annually by the Board of Governors of The University of North Carolina. Monitoring data shall include (i) the entry of State-supported ~~medical graduates into primary care residencies, residencies and clinical training programs, and~~ (ii) the specialty practices by a physician and each midlevel provider who were State-supported graduates as of a date five years after graduation. The Board of Governors shall certify data on graduates, their ~~residencies, residencies and clinical training programs, and~~ subsequent careers by October 1 of each calendar year, beginning in October of 1995, to the Fiscal Research Division of the Legislative Services Office and to the Joint Legislative Education Oversight Committee.

(e) The information provided in subsection (d) of this section shall be made available to the Appropriations Committees of the General Assembly for their use in future funding decisions on medical and health professional education."

Requested by: Senators Martin of Guilford, Forrester, Perdue, Rand, Representatives Gardner, Hayes, Nye, Holmes, Creech, Esposito

#### **PUBLIC HEALTH STUDY COMMISSION**

**Sec. 23A.6.** (a) G.S. 120-196 reads as rewritten:

"§ 120-196. *Commission duties.*

The Commission shall study the availability and accessibility of public health services to all citizens throughout the State. In conducting the study the Commission shall:



- (1) Determine whether the public health services currently available in each county or district health department conform to the mission and essential services established under G.S. 130A-1.1;
- (2) Study the workforce needs of each county or district health department, including salary levels, professional credentials, and continuing education requirements, and determine the impact that shortages of public health professional personnel have on the delivery of public health services in county and district health departments;
- (3) Review the status and needs of local health departments relative to facilities, and the need for the development of minimum standards governing the provision and maintenance of these facilities;
- (4) Propose a long-range plan for funding the public health system, which plan shall include a review and evaluation of the current structure and financing of public health in North Carolina and any other recommendations the Commission deems appropriate based on its study activities; ~~and~~
- (5) Conduct any other studies or evaluations the Commission considers necessary to effectuate its ~~purpose~~, purpose; and
- (6) Study the capacity of small counties to meet the core public health functions mandated by current State and federal law. The Commission shall consider whether the current county and district health departments should be organized into a network of larger multidistrict community administrative units. In making its recommendations on this study, the Commission shall consider whether the State should establish minimum populations for local health departments, and if so, shall recommend the number of and configuration for these multicounty administrative units and shall recommend a series of incentives to ease county transition into these new arrangements."

(b) Section 8.1 of Chapter 771 of the 1993 Session Laws reads as rewritten:

"Sec. 8.1. This act is effective upon ratification. ~~Part II of this act is repealed on June 30, 1995.~~"

## PART 24. DEPARTMENT OF AGRICULTURE

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt  
**CATTLE AND LIVESTOCK EXPOSITION CENTER**

**Sec. 24.** (a) Any unencumbered funds that were appropriated to the Department of Agriculture in Chapter 561 of the 1993 Session Laws for the 1993-94 fiscal year as planning funds for a livestock facility shall be placed in a reserve in the Department of Agriculture until further allocated by the 1995 General Assembly, Regular Session 1996.

(b) Section 40 of Chapter 769 of the 1993 Session Laws reads as rewritten:

~~"Sec. 40. Of the funds appropriated in this act~~ Any unencumbered funds that were appropriated to the Department of Agriculture for the 1994-95 fiscal year, the sum of seven hundred thirty-seven thousand three hundred



~~fifty dollars (\$737,350) shall be used year for planning the construction of the Cattle and Livestock Exposition Center in Alamance County, shall be placed in a reserve in the Department of Agriculture until further allocated by the 1995 General Assembly, Regular Session 1996. The Center will house livestock shows and exhibits, educational programs, and a laboratory for embryo transfer research, semen evaluation, and livestock blood work."~~

Requested by: Senators Martin of Pitt, Kerr, Jordan, Representatives Mitchell, Weatherly.

#### **DAIRY FACILITY AT CHERRY FARM UNIT**

**Sec. 24.1.** The sum of two hundred fifty thousand dollars (\$250,000) shall be transferred from the Department of Agriculture's timber sales capital improvement account, established pursuant to G.S. 146-30, to the Department of Agriculture for the 1995-96 fiscal year and shall be used to construct and equip a new dairy facility to be located at the Cherry Farm Unit.

### **PART 25. DEPARTMENT OF COMMERCE**

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

#### **INDUSTRIAL COMMISSION/FRAUD CHECK**

**Sec. 25.** (a) G. S. 97-88.2(b) reads as rewritten:

~~"(b) The Commission shall refer all cases of suspected fraud and all violations related to workers' compensation claims, by or against insurers or self-funded employers, to the Department of Insurance to; shall:~~

- ~~(1) Perform investigations regarding all cases of suspected fraud and all violations related to workers' compensation claims, by or against insurers or self-funded employers, and refer possible criminal violations to the appropriate prosecutorial authorities;~~
- ~~(2) Conduct administrative violation proceedings; and~~
- ~~(3) Assess and collect penalties and restitution."~~

(b) Of the funds appropriated in this act to the Department of Commerce, the sum of one hundred thousand dollars (\$100,000) for the 1995-96 fiscal year and the sum of one hundred thousand dollars (\$100,000) for the 1996-97 fiscal year shall be used for the North Carolina Industrial Commission to implement subsection (a) of this section.

(c) This section is effective upon ratification.

Requested by: Senators Martin of Pitt, Kerr, Jordan, Representatives Mitchell, Weatherly

#### **CENTER FOR COMMUNITY SELF-HELP FUNDS**

**Sec. 25.1.** (a) Of the funds appropriated in this act to the Department of Commerce, the sum of one million dollars (\$1,000,000) for the 1995-96 fiscal year shall be allocated to the Center for Community Self-Help to further a statewide program of lending for home ownership throughout North Carolina. These funds will be leveraged on a ten-to-one basis, generating at least ten dollars (\$10.00) of nontraditional home loans

for every one dollar (\$1.00) of State funds. Payments of principal shall be available for further loans or loan guarantees.

(b) The Center for Community Self-Help shall submit, within 180 days after the close of its fiscal year, audited financial statements to the State Auditor. All records pertaining to the use of State funds shall be made available to the State Auditor upon request. The Center for Community Self-Help shall make quarterly reports on the use of State funds to the State Auditor, in form and format prescribed by the State Auditor or his designee. The Center for Community Self-Help shall make a written report by May 1 of each year for the next three years to the General Assembly on the use of the funds allocated under this section.

(c) The Center for Community Self-Help shall report to the Joint Legislative Commission on Governmental Operations, the House Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Department of Commerce on a quarterly basis for the next three years.

(d) The Office of the State Auditor may conduct an annual end-of-year audit of the revolving fund for economic development lending created by this appropriation for each year of the life of the revolving fund.

(e) If the Center for Community Self-Help dissolves, the corporation shall transfer the remaining assets of the revolving fund to the State and shall refrain from disposing of the revolving fund assets without approval of the State Treasurer.

(f) The Department of Commerce shall disburse this appropriation within 15 working days of the receipt of a request for the funds from the Center for Community Self-Help. The request shall include a commitment of the leveraged funds by the Center for Community Self-Help or its affiliates.

Requested by: Senators Perdue, Martin of Pitt, Odom, Jordan, Kerr, Representatives Mitchell, Weatherly

#### **WANCHESE SEAFOOD INDUSTRIAL PARK FUNDS**

**Sec. 25.1A.** Funds appropriated in Chapter 324 of the 1995 Session Laws to the Department of Commerce for the Wanchese Seafood Industrial Park may be expended by the North Carolina Seafood Industrial Park Authority for operations, maintenance, repair, and capital improvements in accordance with Article 23C of Chapter 113 of the General Statutes.

Requested by: Representatives Mitchell, Weatherly, Senators Martin of Pitt, Jordan, Kerr

#### **BUDGET FLEXIBILITY/INTERNATIONAL TRADE DIVISION**

**Sec. 25.2.** Of the funds appropriated in this act to the Department of Commerce, the sum of one hundred thousand dollars (\$100,000) for the 1995-96 fiscal year shall be placed in a reserve to be used to cover devaluation of the dollar to a foreign currency only if the devaluation is five percent (5%) or greater and shall be used to cover increased expenses due to foreign country inflation only if the inflation is greater than one percent (1%) per month. Funds allocated pursuant to this section shall be limited to a maximum of forty thousand dollars (\$40,000) per office for the

Department's International Trade Division offices in Hong Kong, Tokyo, Dusseldorf, and Mexico City.

Requested by: Senators Martin of Pitt, Jordan, Kerr. Representatives Mitchell, Weatherly

### **INDUSTRIAL RECRUITMENT COMPETITIVE FUND REPORTING REQUIREMENT**

**Sec. 25.2A.** The Department of Commerce shall report on or before October 1, 1995 and quarterly thereafter to the Joint Legislative Commission on Governmental Operations on the commitment, allocation, and use of funds allocated from the Industrial Recruitment Competitive Fund.

Requested by: Representatives Mitchell, Weatherly. Senators Martin of Pitt, Jordan, Kerr

### **NCACTS REPORTING REQUIREMENT**

**Sec. 25.3.** Section 11.2 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 11.2. The North Carolina Alliance for Competitive Technologies (NCACTS) created by Executive Order No. 63 on September 26, 1994, is transferred from the Department of Administration to the Department of Commerce. All positions, property, unexpended balances of appropriations, allocations and other refunds, including the functions of budgeting and purchasing, for NCACTS are transferred from the Department of Administration to the Department of Commerce.

Beginning October 1, 1995, and quarterly thereafter, NCACTS shall report ~~quarterly~~ on its ~~operations~~ operations, use of funds, and performance to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division."

Requested by: Senators Martin of Pitt, Jordan, Ballance, Edwards, Lucas, Gulley, Rand, Kerr, Cooper. Representatives Mitchell, Weatherly, H. Hunter

### **FUNDS FOR ECONOMIC DEVELOPMENT**

**Sec. 25.4.** (a) Definition. -- For purposes of this section, the term 'community development corporation' means a nonprofit corporation:

- (1) Chartered pursuant to Chapter 55A of the General Statutes;
- (2) Tax-exempt pursuant to section 501(c)(3) of the Internal Revenue Code of 1986;
- (3) Whose primary mission is to develop and improve low-income communities and neighborhoods through economic and related development;
- (4) Whose activities and decisions are initiated, managed, and controlled by the constituents of those local communities; and
- (5) Whose primary function is to act as deal-maker and packager of projects and activities that will increase their constituencies' opportunities to become owners, managers, and producers of small businesses, affordable housing, and jobs designed to produce positive cash flow and curb blight in the target community.

(b) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of three million eight hundred thousand dollars (\$3,800,000) for the 1995-96 fiscal year shall be placed in an Economic and Community Development Program Reserve. Funds shall be allocated from the Reserve by the Rural Economic Development Center, Inc. as follows:

- (1) \$1,350,000 for community development grants to support community development projects and activities within the State's minority communities. Any community development corporation as defined in this section is eligible to apply for funds. The Rural Economic Development Center shall establish performance-based criteria for determining which community development corporations will receive a grant and the grant amount. Funding will also be allocated to the North Carolina Association of Community Development Corporations, Inc. The Rural Economic Development Center, Inc., shall allocate these grant funds from the Economic and Community Development Program Reserve as follows:
  - a. \$900,000 for direct grants to the local community development corporations that have previously received State funds for this purpose to support operations and project activities,
  - b. \$250,000 for direct grants to local community development organizations that have not previously received State funds,
  - c. \$150,000 to the North Carolina Association of Community Development Corporations, Inc. to provide training, technical assistance, resource development, project assistance, and support for local community development corporations statewide, and
  - d. \$50,000 to the Rural Economic Development Center, Inc. to be used to cover expenses in administering this section;
- (2) \$275,000 to the Minority Credit Union Support Center for technical assistance to community-based minority credit unions;
- (3) \$250,000 to the Microenterprise Loan Program to support the loan fund and operations of the Program;
- (4) \$100,000 allocated as follows:
  - a. \$25,000 to the Opportunities Industrialization Center of Wilson, Inc., for its ongoing job training programs;
  - b. \$25,000 to Opportunities Industrialization Center, Inc., in Rocky Mount, for its ongoing job training programs;
  - c. \$25,000 to Pitt-Greenville Opportunities Industrialization Center, Inc. for its ongoing job training programs; and
  - d. \$25,000 to the Opportunities Industrialization Center of Lenoir, Greene, and Jones Counties.

Funds allocated pursuant to this subdivision shall be in addition to funds allocated pursuant to Section 25.12 of Chapter 324 of the 1995 Session Laws. Reporting requirements of that section shall apply to funds allocated under this subdivision;

- (5) \$400,000 shall be used for a program to provide supplemental funding for matching requirements for economic development in economically depressed areas. The Center shall use the funds to make grants to local governments and nonprofit corporations to provide funds necessary to match federal grants or other grants for necessary economic development projects and activities in economically depressed areas. The grant recipients shall be selected on the basis of need;
- (6) \$275,000 to the Land Loss Prevention Project, Inc., to provide free legal representation to low-income, financially distressed small farmers. The Land Loss Prevention Project, Inc., shall not use these funds to represent farmers who have income and assets that would make them financially ineligible for legal services pursuant to Title 45, Part 1611 of the Code of Federal Regulations. The Land Loss Prevention Project, Inc., shall report to the Joint Legislative Commission on Governmental Operations on October 1 and March 1 of each fiscal year, and more frequently as requested by the Commission, on the use of these funds;
- (7) \$245,000 to the North Carolina Coalition of Farm and Rural Families, Inc., for its Small Farm Economic Development Project. These funds shall be used to foster economic development within the State's rural farm communities by offering financial, marketing, and technical assistance to small and limited resource farmers. The North Carolina Coalition of Farm and Rural Families, Inc., shall report to the Joint Legislative Commission on Governmental Operations on October 1 and March 1 of each fiscal year, and more frequently as requested by the Commission, on the use of these funds;
- (8) \$780,000 to the North Carolina Institute for Minority Economic Development, Inc., to foster minority economic development within the State through policy analysis, information and technical assistance, resource expansion and support of community-based demonstration initiatives. The North Carolina Institute for Minority Economic Development, Inc., shall report to the Joint Legislative Commission on Governmental Operations on October 1 and March 1 of each fiscal year, and more frequently as requested by the Commission, on the use of these funds;
- (9) \$100,000 to the Lake Gaston Economic Development Corporation for planning and preliminary development of a conference center and related facilities for the Lake Gaston area; and
- (10) \$25,000 to the Roanoke-Chowan Community College for its sheltered workshop program.

(c) The Rural Economic Development Center, Inc. shall report to the Joint Legislative Commission on Governmental Operations on October 1 and March 1 of each fiscal year, and more frequently as requested by the Commission, on the uses of funds allocated pursuant to subdivisions (1), (2), (3), (4), (5), (9), and (10) of subsection (b) of this section.



Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt  
**CLEVELAND COUNTY PARTICIPATION IN ECONOMIC  
 DEVELOPMENT COMMISSION**

**Sec. 25.5.** (a) G.S. 158-8.1(a) reads as rewritten:

"(a) There is created the Western North Carolina Regional Economic Development Commission to serve Buncombe, Cherokee, Clay, ~~Cleveland~~, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Polk, Rutherford, Swain, Transylvania, and Yancey Counties, and any other county assigned to the Commission by the Department of Commerce as authorized by law. The Commission shall be located administratively in the Department of Commerce but shall exercise its statutory powers and duties independently of the Department of Commerce. Funds appropriated for the Commission by the General Assembly shall be disbursed directly to the Commission at the beginning of each fiscal year."

(b) The Department of Commerce shall allocate Cleveland County's pro rata share of economic development funds appropriated to the Department pursuant to Section 25.4 of Chapter 324 of the 1995 Session Laws to the Carolinas Partnership, Inc., Economic Development Commission, of which Cleveland County has been and is currently a dues-paying member.

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

**COMMON FOLLOW-UP SYSTEM FOR STATE JOB TRAINING AND  
 EDUCATION PROGRAMS**

**Sec. 25.6.** (a) Chapter 96 of the General Statutes is amended by adding the following new Article to read:

**"ARTICLE 4.**

**"Job Training, Education, and Placement  
 Information Management.**

**"§ 96-30. Findings and purpose.**

The General Assembly finds it in the best interests of this State that the establishment, maintenance, and funding of State job training, education, and placement programs be based on current, comprehensive information on the effectiveness of these programs in securing employment for North Carolina citizens and providing a well-trained workforce for business and industry in this State. To this end, it is the purpose of this Article to require the establishment of an information system that maintains up-to-date job-related information on current and former participants in State job training and education programs.

**"§ 96-31. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the term:

- (1) 'CFS' means the common follow-up information management system developed by the Employment Security Commission of North Carolina as authorized under this Article.
- (2) 'ESC' means the Employment Security Commission of North Carolina.
- (3) 'OSBM' means the Office of State Budget and Management.

- (4) 'State job training, education, and placement program' or 'State-funded program' means a program operated by a State or local government agency or entity and supported in whole or in part by State or federal funds, that provides job training and education or job placement services to program participants. The term does not include on-the-job training provided to current employees of the agency or entity for the purposes of professional development.

"§ 96-32. Common follow-up information management system created.

(a) The Employment Security Commission of North Carolina shall develop, implement, and maintain a common follow-up information management system for tracking the employment status of current and former participants in State job training, education, and placement programs. The system shall provide for the automated collection, organization, dissemination, and analysis of data obtained from State-funded programs that provide job training and education and job placement services to program participants. In developing the system, the ESC shall ensure that data and information collected from State agencies is confidential, not open for general public inspection, and maintained and disseminated in a manner that protects the identity of individual persons from general public disclosure.

(b) The ESC in consultation with OSBM shall adopt procedures and guidelines for the development and implementation of the CFS authorized under this section.

(c) Based on data collected under the CFS, the Office of State Budget and Management shall evaluate the effectiveness of job training, education, and placement programs to determine if specific program goals and objectives are attained, to determine placement and completion rates for each program, and to make recommendations regarding the continuation of State funding for programs evaluated. The ESC shall provide to OSBM data collected under the CFS in a manner and with the frequency necessary for the Office of State Budget and Management to conduct the evaluation required under this subsection. The ESC shall consult with OSBM to determine the most efficient and effective method for providing to OSBM data collected under the CFS. The OSBM shall maintain the same levels of confidentiality with respect to CFS data received from the ESC as is required of the ESC under this Article. OSBM shall coordinate with the Office of State Planning to determine what data will be collected to support the State planning and budgetary process.

"§ 96-33. State agencies required to provide information and data.

(a) Every State agency and local government agency or entity that receives State or federal funds for the direct or indirect support of State job training, education, and placement programs shall provide to the Employment Security Commission of North Carolina all data and information available to or within the agency or entity's possession requested by the ESC for input into the common follow-up information management system authorized under this Article.

(b) Each agency or entity required to report information and data to the ESC under this Article shall maintain true and accurate records of the information and data requested by the ESC. The records shall be open to

ESC inspection and copying at reasonable times and as often as necessary. Each agency or entity shall further provide, upon request by ESC, sworn or unsworn reports with respect to persons employed or trained by the agency or entity, as deemed necessary by the ESC to carry out the purposes of this Article. Information obtained by the ESC from the agency or entity shall be held by ESC as confidential and shall not be published or open to public inspection other than in a manner that protects the identity of individual persons and employers.

"§ 96-34. Prohibitions on use of information collected.

Data and information reported, collected, maintained, disseminated, and analyzed may not be used by any State or local government agency or entity for purposes of making personal contacts with current or former students or their employers or trainers.

"§ 96-35. Reports on common follow-up system activities.

(a) The Employment Security Commission of North Carolina shall present annually by May 1 to the General Assembly and to the Governor a report of CFS activities for the preceding calendar year. The report shall include information on and evaluation of job training, education, and placement programs for which data was reported by State and local agencies subject to this Article. Evaluation of the programs shall be on the basis of fiscal year data.

(b) The Office of State Budget and Management shall report to to the Governor and to the General Assembly upon the convening of each biennial session, its evaluation of and recommendations regarding job training, education, and placement programs for which data was provided to the CFS."

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt  
**PETROLEUM OVERCHARGE FUNDS ALLOCATION**

**Sec. 25.7.** (a) The funds and interest thereon received from the case of the United States v. Exxon are deposited in the Special Reserve for Oil Overcharge Funds. There is appropriated from the Special Reserve to the Department of Commerce the sum of one million six hundred fifty thousand dollars (\$1,650,000) for the 1995-96 fiscal year and the sum of one million six hundred fifty thousand dollars (\$1,650,000) for the 1996-97 fiscal year to be used for projects under the State Energy Conservation Plan.

(b) There is appropriated from funds and interest thereon received from the United States Department of Energy's Stripper Well Litigation (MDL378) that remain in the Special Reserve for Oil Overcharge Funds to the Department of Commerce the sum of two million five hundred thousand dollars (\$2,500,000) for the 1995-96 fiscal year and two million two hundred fifty thousand dollars (\$2,250,000) for the 1996-97 fiscal year to be allocated for the Low Income Weatherization Program.

(c) Any funds remaining in the Special Reserve for Oil Overcharge Funds after the allocations made pursuant to subsections (a) and (b) of this section may be expended only as authorized by the General Assembly. All interest or income accruing from all deposits or investments of cash balances shall be credited to the Special Reserve Oil Overcharge Funds.

(d) The funds and interest thereon received from the Diamond Shamrock Settlement that remain in a reserve in the Office of State Budget and Management for the Department of Commerce to administer the petroleum overcharge funds pursuant to Section 112 of Chapter 830 of the 1987 Session Laws shall continue to be available to the Department of Commerce on an as-needed basis.

(e) The Department of Commerce shall submit comprehensive annual reports to the General Assembly by May 15, 1996, and January 31, 1997, which detail the use of all Petroleum Overcharge Funds. Any State department or agency that has received Petroleum Overcharge Funds shall provide all information requested by the Department of Commerce for the purpose of preparing these reports.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt  
**PETROLEUM OVERCHARGE ATTORNEY FEES**

**Sec. 25.8.** (a) Unless prohibited by federal law, rule, or regulation or preexisting settlement agreement, no later than October 1, 1989, the North Carolina Attorney General shall direct the withdrawal of all funds received in the cases of United States v. Exxon and Stripper Well that are held in accounts or reserves located out-of-state for payment of attorney fees and reasonable expenses incurred in connection with oil overcharge litigation authorized by the Attorney General. The Attorney General shall deposit these funds, and all funds to be received from Petroleum Overcharge Funds in the future for attorney fees and reasonable expenses, into the Special Reserve for Oil Overcharge Funds.

(b) All attorney fees and reasonable expenses incurred in connection with oil overcharge litigation shall be paid by the State Treasurer from Petroleum Overcharge Funds that have been received by this State and deposited into the Special Reserve for Oil Overcharge Funds.

(c) Notwithstanding any other provision of law, the Attorney General may authorize the payment of attorney fees and reasonable expenses from the Special Reserve for Oil Overcharge Funds without further action of the General Assembly, and funds are hereby appropriated from the Special Reserve for Oil Overcharge Funds for the 1995-96 fiscal year and for the 1996-97 fiscal year for that purpose.

Requested by: Representatives Mitchell, Weatherly, Senators Martin of Pitt, Jordan, Kerr

#### **WORKER TRAINING TRUST FUND APPROPRIATIONS**

**Sec. 25.9.** (a) There is appropriated from the Worker Training Trust Fund to the Employment Security Commission of North Carolina the sum of five million eight hundred thirty-nine thousand nine hundred sixty-four dollars (\$5,839,964) for the 1995-96 fiscal year and the sum of five million eight hundred thirty-nine thousand nine hundred sixty-four dollars (\$5,839,964) for the 1996-97 fiscal year for the operation of local offices.

(b) Notwithstanding G.S. 96-5(c), there is appropriated from the Special Employment Security Administration Fund to the Employment Security Commission of North Carolina, the sum of two million dollars (\$2,000,000) for the 1995-96 fiscal year and the sum of two million dollars



(\$2,000,000) for the 1996-97 fiscal year for administration of the Veterans Employment Program, Employment Services Program, and Unemployment Insurance Program.

(c) Supplemental federal funds or other additional funds received by the Employment Security Commission for similar purposes shall be expended prior to the expenditure of funds appropriated by this section.

(d) Notwithstanding the provisions of G.S. 96-5(f), there is appropriated from the Worker Training Trust Fund to the following agencies the following sums for the 1995-96 and the 1996-97 fiscal years for the following purposes:

- (1) \$2,400,000 for the 1995-96 fiscal year and \$2,400,000 for the 1996-97 fiscal year to the Department of Commerce, Division of Employment and Training, for the Employment and Training Grant Program;
- (2) \$1,000,000 for the 1995-96 fiscal year and \$1,000,000 for the 1996-97 fiscal year to the Department of Labor for customized training of the unemployed and the working poor for specific jobs needed by employers through the Department's Pre-Apprenticeship Division;
- (3) \$1,528,067 for the 1995-96 fiscal year and \$1,528,067 for the 1996-97 fiscal year to the Department of Human Resources to assist welfare recipients in gaining employment through the federally funded Job Opportunities and Basic Skills Program in such a way as to gain the maximum match of federal funds for the State dollars appropriated;
- (4) \$1,746,000 for the 1995-96 fiscal year and \$1,746,000 for the 1996-97 fiscal year to the Department of Community Colleges to continue the Focused Industrial Training Program;
- (5) \$225,000 for the 1995-96 fiscal year and \$225,000 for the 1996-97 fiscal year to the Employment Security Commission for the Occupational Information Coordinating Committee to develop and operate an interagency system to track former participants in State education and training programs; and
- (6) \$300,000 for the 1995-96 fiscal year and \$300,000 for the 1996-97 fiscal year to the Department of Community Colleges for a training program in entrepreneurial skills to be operated by North Carolina REAL Enterprises.

Requested by: Senators Cochrane, Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

#### **ESC VOTER REGISTRATION FUNDS**

**Sec. 25.10.** (a) There is appropriated from the Worker Training Trust Fund to the Department of Commerce, Employment Security Commission, the sum of three hundred thousand dollars (\$300,000) for the 1995-96 fiscal year to carry out the provisions of the National Voter Registration Act (P.L. 103-31).

(b) The Employment Security Commission shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division no later than 30 days before reconvening in 1996 of the



1995 Regular Session as to how the funds appropriated by subsection (a) of this section were expended, specifically:

- (1) Its methodology for charging costs against the appropriation;
- (2) Detailing of the costs by categories;
- (3) How much of the costs supplanted federal funds and how much were incremental costs; and
- (4) Whether employer contribution rates can be reduced to the extent that federal funds were supplanted, and what State or federal legislation would be required to make such rate reductions.

(c) Section 73 of Chapter 762 of the 1993 Session Laws reads as rewritten:

"Sec. 73. Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences. G.S. 163-82.20(a)(3) and G.S. 163-82.20(b1) as enacted in Section 2 of this act expire ~~January~~ July 1, 1996."

(d) Section 16.1(b) of Chapter 769 of the 1993 Session Laws is extended through December 31, 1995.

Requested by: Representatives Mitchell, Weatherly, Senators Martin of Pitt, Jordan, Kerr

#### **ALLOCATION OF MCNC REDUCTIONS IN FUNDS**

**Sec. 25.11.** Reductions in this act to funds appropriated in Chapter 324 of the 1995 Session Laws to MCNC shall be allocated by MCNC among the program categories listed in Section 25.9(c) of Chapter 324 of the 1995 Session Laws. MCNC shall report on the allocation of the reductions to the Joint Legislative Commission on Governmental Operations within 30 days of the allocation.

Requested by: Senators Hobbs, Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

#### **FUNDS FOR ESC NOTIFICATION OF EARNED INCOME CREDIT**

**Sec. 25.11A.** The Department of Commerce, Employment Security Commission, may spend up to twenty-five thousand dollars (\$25,000) in each fiscal year from the Special Employment Security Administration Fund to reprint and mail notices regarding the federal Earned Income Credit to unemployment insurance recipients.

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

#### **NORTH CAROLINA TECHNOLOGICAL DEVELOPMENT AUTHORITY/REPORTING**

**Sec. 25.12.** The North Carolina Technological Development Authority, Inc. shall report on all of its programs to the Joint Legislative

Commission on Governmental Operations and the Fiscal Research Division on March 1 of each fiscal year, and more frequently as requested by the Commission. The reports shall include information on the activities and the accomplishments during the past fiscal year, itemized expenditures during the past fiscal year with sources of funding, planned activities, and accomplishments for at least the next 12 months, and itemized anticipated expenditures with sources of funding for the next 12 months.

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

#### **INDUSTRIAL COMMISSION MEDIATION/SUNSET OFF**

**Sec. 25.13.** Section 5 of Chapter 399 of the 1993 Session Laws reads as rewritten:

"Sec. 5. Section 3 of this act is effective upon ratification. Sections 1, 2, and 4 of this act become effective October 1, 1993, only if the General Assembly appropriates funds to implement the purpose of these sections, ~~expire June 30, 1995,~~ and apply to claims pending on or filed after the effective date."

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

#### **WORLD TRADE CENTER FUNDS**

**Sec. 25.14.** Of the funds appropriated in this act to the Department of Commerce, the sum of two hundred thousand dollars (\$200,000) for the 1995-96 fiscal year shall be allocated to the North Carolina World Trade Center to continue to provide education programs for small and medium sized businesses. The Department shall report to the Joint Legislative Commission on Governmental Operations on the use of these funds on or before March 1 of each fiscal year, and more frequently as required by the Commission.

### **PART 26. DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

Requested by: Representatives Wilkins, Mitchell, Weatherly, H. Hunter, Senator Martin of Pitt

#### **STATEWIDE AQUATIC WEED ASSESSMENT**

**Sec. 26.** (a) Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, the sum of thirty thousand dollars (\$30,000) for the 1995-96 fiscal year shall be used by the Department of Environment, Health, and Natural Resources and the North Carolina Aquatic Weed Council to study aquatic weed infestation on a statewide basis.

(b) The Department of Environment, Health, and Natural Resources and the North Carolina Aquatic Weed Council shall report their findings to the Joint Legislative Commission on Governmental Operations by March 15, 1996.

(c) The report shall identify relevant research related to the control and eradication of noxious aquatic plants, include an assessment of the

environmental and economic impacts caused by infestation, an assessment of the impact of federal regulations, and a discussion of the issues and options related to control and eradication, enforcement and funding mechanisms. The report shall also include options to reduce or eliminate aquatic weed infestation and a recommended statewide action plan. The report shall consider funding issues and shall address both total budgetary requirements and alternative sources of funding, including fees and other receipts.

Requested by: Representatives Holmes, Mitchell, Weatherly, Yongue, Senators Martin of Pitt, Jordan, Kerr

#### **WATERSHED FUNDS DO NOT REVERT**

**Sec. 26.1.** Subsection (b) of Section 107 of Chapter 561 of the 1993 Session Laws reads as rewritten:

"(b) Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects listed in subsection (a) of this section are delayed and the budgeted State funds cannot be used during the 1993-94 fiscal year, or if the projects listed in subsection (a) of this section are accomplished at a lower cost, the Department may use the resulting fund availability to fund:

- (1) Corps of Engineers project feasibility studies, or
- (2) Corps of Engineers projects whose schedules have advanced and require State matching funds in fiscal year 1993-94, or
- (3) State-local Water Resources Development Projects.

Funds Funds, except those allocated in subdivisions (a)(14),(15),(16), and (17) of this section, not expended or encumbered for these purposes shall revert to the General Fund at the end of the 1994-95 fiscal year. The funds allocated in subdivisions (a)(14),(15),(16), and (17) of this section shall not revert until June 30, 1997."

Requested by: Representatives Culp, Mitchell, Weatherly, Senators Martin of Pitt, Jordan, Kerr

#### **RANDLEMAN DAM RESERVE RELEASE RESTRICTIONS**

**Sec. 26.2.** Subsection (c) of Section 8 of Chapter 777 of the 1993 Session Laws reads as rewritten:

"(c) All funds appropriated in Chapter 769 of the 1993 Session Laws for the construction of Randleman Dam shall revert to the General Fund on October 1, 1996, October 1, 1997, if construction has not begun before that date."

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

#### **AGRICULTURE COST SHARE PROGRAM**

**Sec. 26.2A.** Of the funds appropriated in Chapter 324 of the 1995 Session Laws to the Department of Environment, Health, and Natural Resources for the 1995-96 fiscal year for the Agriculture Cost Share Program for Nonpoint Source Pollution Control, the sum of fifty thousand dollars (\$50,000) shall be used for additional funding for the demonstration project authorized in Section 165 of Chapter 689 of the 1991 Session Laws.

These funds shall be used in accordance with the match requirements specified in G.S. 143-215.74(b)(6).

Requested by: Senators Martin of Pitt, Albertson, Jordan, Kerr, Representatives Mitchell, Weatherly

**AGRICULTURE COST SHARE FUNDS FOR CAPITAL FOR THE MANAGEMENT OF AGRICULTURE WASTE**

**Sec. 26.2B.** Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, Division of Soil and Water Conservation, for the 1995-96 fiscal year for the Agriculture Cost Share Program for Nonpoint Source Pollution Control, the sum of five hundred thousand dollars (\$500,000) shall be used for the 1995-96 fiscal year for capital expenses associated with developing agriculture waste management measures that reduce agricultural nonpoint source discharges, consistent with G.S. 143-214.5(a). These funds shall be used in accordance with the match and program requirements set forth in G.S. 143-215.74(b). When allocating these funds pursuant to this section, the Soil and Water Conservation Commission shall give priority to small, family agricultural operations. Any funds remaining at the end of the 1995-96 fiscal year shall not revert, but shall remain available for the use authorized by this subsection.

Requested by: Representatives Baker, Holmes, Creech, Esposito, Senators Plyler, Perdue, Odum

**TOWN FORK CREEK SOIL CONSERVATION PROJECT**

**Sec. 26.3.** (a) Of the funds appropriated in Section 41(a)(6) of Chapter 769 of the 1993 Session Laws for State-local projects, the sum of seven hundred fifty thousand dollars (\$750,000) shall not revert until June 30, 1997. (These funds are to replace funds originally appropriated for Town Fork Creek that were later reallocated as a grant to the Pilot Mountain Foundation, Inc., for capital improvements.)

(b) The sum of four hundred thousand dollars (\$400,000) appropriated in Section 107(a)(16) of Chapter 561 of the 1993 Session Laws shall not revert until June 30, 1997.

(c) The funds appropriated in Chapter 480 of the 1985 Session Laws and Chapter 754 of the 1989 Session Laws for construction of the Town Fork Reservoir Project in Stokes County, the funds appropriated in Section 107(a)(16) of Chapter 561 of the 1993 Session Laws, and the funds appropriated in Section 41(a)(6) of Chapter 769 of the 1993 Session Laws for State-local projects that do not revert shall be placed in a reserve account. The funds in the reserve account shall not be expended or encumbered pending the completion, without cost to the State, of all of the following:

- (1) A project cost review including an updated engineering cost estimate of the dam structure and associated costs.
- (2) A cost estimate of the requirements imposed for habitat maintenance by the Wildlife Commission.
- (3) A review of the impact of watershed regulations under review by the Department of Environment, Health, and Natural Resources.

- (4) A review of the potential impact of the agreement with Forsyth County on watershed access.
- (5) A determination of the amount of funds required to be paid by Stokes County and the approval of a majority of the voters of Stokes County in a referendum to be held at the general election in November 1996.

Requested by: Representatives Mitchell, Weatherly, H. Hunter, Holmes, Creech, Esposito, Senators Martin of Pitt, Jordan, Kerr, Plyler, Perdue, Odom

#### **HEALTHY START FOUNDATION FUNDS**

**Sec. 26.4.** Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, the sum of two hundred thousand dollars (\$200,000) for the 1995-96 fiscal year shall be allocated to the North Carolina Healthy Start Foundation to support the programs and activities of the Governor's Commission on Reduction of Infant Mortality. Funds allocated pursuant to this section shall be expended first to support statewide planning, promotion, and coordination for the First Step Campaign. Funds remaining after allocation for First Step shall be used to support other programs and activities. The Healthy Start Foundation shall report on all of its programs to the Joint Legislative Commission on Governmental Operations on or before March 1, 1996. The report shall include information on the Foundation's activities and accomplishments during the past fiscal year, a list of the groups, organizations, communities, and other recipients of assistance from the Foundation in the last 12 months, itemized expenditures during the past fiscal year with sources of funding, planned activities, and accomplishments for at least the next 12 months, and itemized anticipated expenditures with sources of funding for the next 12 months.

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

#### **MARINE FISHERIES LAW ENFORCEMENT PERSONNEL**

**Sec. 26.4A.** The additional law enforcement positions authorized by this act for the Division of Marine Fisheries, Department of Environment, Health, and Natural Resources shall not be located in Raleigh.

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

#### **MARINE FISHERIES**

**Sec. 26.5.** (a) Subsection (a) of Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994, reads as rewritten:

"(a) Except as provided in subsections (b), (c), ~~or (c1), (c1), or (c2)~~, the Department shall not issue any new licenses for a ~~two-year~~ period beginning July 1, 1994, and ending June 30, ~~1996~~ 1997, under the following statutes:

- (1) G.S. 113-152. Vessel licenses.
- (2) G.S. 113-153.1. Crab License.
- (3) G.S. 113-154. Shellfish license
- (4) G.S. 113-154.1. Nonvessel endorsements to sell fish."



(b) G.S. 113-154 is amended by adding a new subsection to read:

"(c1) A shellfish leaseholder under G.S. 113-202, or a water column leaseholder under G.S. 113-202.1 or G.S. 113-202.2 who purchases an individual shellfish license under this section, may utilize up to two additional persons to take shellfish from the leaseholder's lease without purchasing additional individual shellfish licenses. The leaseholder shall be on the premises supervising the person or persons, and the person or persons shall be restricted to taking shellfish only from the leaseholder's lease."

(c) G.S. 113-182(b) is amended by adding a new subdivision to read:

"(3) The possession, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all fish taken in the Atlantic Ocean out to a distance of 200 miles from the State's mean low watermark, when the harvest or landing of the fish is controlled by a quota imposed on the State by a federal fisheries management plan."

(d) Section 3 of Chapter 576 of the 1993 Session Laws is amended by adding a new subsection to read:

"(c2) During the moratorium, a license required to participate in a fishery regulated by a federal fisheries management plan under G.S. 113-182(b)(3) may only be issued to a person who:

- (1) Held a valid vessel license issued under G.S. 113-152, a valid land or sell license issued under G.S. 113-153, or a combination of the two licenses, during at least two of the three years immediately preceding ratification;
- (2) Participated in the fishery for which a license or permit is required during at least two of the three years immediately preceding ratification;
- (3) Landed in North Carolina during each year of participation in the fishery the minimum pounds of fish as established by the Commission in duly adopted rules."

(e) The Marine Fisheries Commission may adopt temporary and permanent rules to authorize the use of no more than three crab pots for noncommercial purposes by a vessel that is not licensed under Article 14 of Chapter 113 of the General Statutes subject to the following conditions:

- (1) The owner of the vessel does not hold any fisheries licenses issued under Article 14 of Chapter 113 of the General Statutes.
- (2) Any crabs taken in these pots are not sold, offered for sale, bartered, or exchanged for merchandise.

(f) Section 26.8C of Chapter 324 of the 1995 Session Laws is repealed.

(g) Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources for the 1995-96 fiscal year and for the 1996-97 fiscal year, the sum of twenty-five thousand dollars (\$25,000) shall be allocated each fiscal year to support the activities of the Moratorium Steering Committee.

(h) Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources for the 1995-96 fiscal year and for the 1996-97 fiscal year, the sum of ten thousand dollars (\$10,000) shall

be allocated each fiscal year to support the activities of the Appeals Panel during the moratorium on fisheries licenses.

(i) Subsection (c) of this section is effective upon ratification.

Requested by: Representatives Mitchell, Weatherly, Senators Martin of Pitt, Jordan, Kerr

### **ABSTINENCE UNTIL MARRIAGE EDUCATION FUNDS**

**Sec. 26.5A.** (a) Of the funds appropriated in Section 2 of Chapter 324 of the 1995 Session Laws to the Department of Environment, Health, and Natural Resources for health programs, the sum of up to fifty thousand dollars (\$50,000) for the 1995-96 fiscal year may be used to fund a sex education curriculum that promotes abstinence until marriage. Systems that apply for these funds may receive up to two thousand five hundred dollars (\$2,500) each. Nothing shall prohibit a school system from receiving private funds to provide this curriculum.

(b) All applications for grants for funds prescribed in subsection (a) of this section shall contain a detailed description of the curriculum to be offered and a full set of materials to be used. Prior to making any grants, the Department shall review all curriculum descriptions and materials and shall use the results of this review in determining whether to award grants. If any of the initial school systems that apply for grants are rejected by the review process, other school systems may apply.

(c) The Department shall report on the status and funding of the abstinence until marriage education curriculum to the House Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and to the Joint Legislative Commission on Governmental Operations by May 1, 1996.

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

### **BEAVER DAMAGE CONTROL FUNDS**

**Sec. 26.6.** (a) Subsection (b) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws and by Section 27.3 of Chapter 769 of the 1993 Session Laws, reads as rewritten:

"(b) The Beaver Damage Control Advisory Board shall develop a pilot program to control beaver damage on private and public lands. Bladen, Brunswick, Carteret, Chatham, Craven, Columbus, Duplin, Edgecombe, Franklin, Greene, Halifax, Hertford, Johnston, Lincoln, Nash, Onslow, Pamlico, Pender, Pitt, Robeson, Sampson, Scotland, Vance, Warren, Washington, Wayne, and Wilson Counties shall participate in the pilot program. The Beaver Damage Control Advisory Board shall act in an advisory capacity to the Wildlife Resources Commission in the implementation of the program. In developing the program, the Board shall:

- (1) Orient the program primarily toward public health and safety and toward landowner assistance, providing some relief to landowners through beaver control and management rather than eradication;

- (2) Develop a priority system for responding to complaints about beaver damage;
- (3) Develop a system for documenting all activities associated with beaver damage control, so as to facilitate evaluation of the program;
- (4) Provide educational activities as a part of the program, such as printed materials, on-site instructions, and local workshops;
- (5) Provide for the hiring of personnel necessary to implement beaver damage control activities, administer the pilot program, and set salaries of personnel;
- (6) Evaluate the costs and benefits of the program that might be applicable elsewhere in North Carolina.

No later than September 30, 1994 and again upon the conclusion of the pilot program on June 30, ~~1995~~, 1996, the Board shall issue a report to the Wildlife Resources Commission on the program to date, including recommendations on the feasibility of continuing the program in participating counties and the desirability of expanding the program into other counties. The Wildlife Resources Commission shall prepare a plan to implement a statewide program to control beaver damage on private and public lands. No later than January 1, 1995, the Wildlife Resources Commission shall present its plan in a report to the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources."

(b) Subsection (h) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws and by Section 27.3 of Chapter 769 of the 1993 Session Laws, reads as rewritten:

"(h) Subsections (a) through (d) of this section expire June 30, ~~1995~~, 1996."

(c) Section 7 of Chapter 358 of the 1995 Session Laws is repealed.

(d) Of the funds appropriated from the General Fund to the Wildlife Resources Commission for the 1995-96 fiscal year, there is allocated the sum of three hundred seventy-two thousand six hundred ninety dollars (\$372,690) to provide the State share necessary to continue the beaver damage control pilot program established by Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws and Section 27.3 of the 1993 Session Laws, in Bladen, Brunswick, Carteret, Chatham, Craven, Columbus, Duplin, Edgecombe, Franklin, Greene, Halifax, Hertford, Johnston, Lincoln, Nash, Onslow, Pamlico, Pender, Pitt, Robeson, Sampson, Scotland, Vance, Warren, Washington, Wayne, and Wilson Counties, provided the sum of twenty-five thousand dollars (\$25,000) in federal funds is available in each fiscal year to provide the federal share. These funds shall be matched by four thousand dollars (\$4,000) of local funds in each fiscal year from each of the 27 participating counties.

Requested by: Senators Martin of Pitt, Jordan, Kerr. Representatives Mitchell, Weatherly

**STUDY ALTERNATIVES FOR DISPOSAL OF DREDGING MATERIALS**

**Sec. 26.7.** The Department of Environment, Health, and Natural Resources shall study the feasibility and benefit of using the materials dredged from waterways to create artificial wetlands or island marshes as an alternative method of disposing of dredge material. The Department shall consider the "island marshes" located offshore of the Aransas National Wildlife Refuge on the Texas coast as a model. The Department shall report to the Joint Legislative Commission on Governmental Operations regarding its findings and recommendations by March 1, 1996.

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

#### **FOOD SANITATION FUNDS**

**Sec. 26.8.** (a) Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, the sum of one hundred thousand dollars (\$100,000) for the 1995-96 fiscal year and the sum of one hundred thousand dollars (\$100,000) for the 1996-97-fiscal year shall be used to conduct conferences to provide continuing education and training of environmental health specialists.

(b) Effective January 1, 1996, G.S. 130A-248(a3), as amended by Chapter 123 of the 1995 Session Laws, reads as rewritten:

"(a3) The rules adopted by the Commission pursuant to subsections (a), (a1), and (a2) of this section shall address, but not be limited to, the following:

- (1) Sanitation requirements for cleanliness of floors, walls, ceilings, storage spaces, utensils, ventilation equipment, and other areas and items;
- (2) Requirements for:
  - a. Lighting and water supply;
  - b. Wastewater collection, treatment, and disposal facilities; and
  - c. Lavatory and toilet facilities, food protection, and waste disposal;
- (3) The cleaning and bactericidal treatment of eating and drinking utensils and other food-contact surfaces;
- (3a) The appropriate and reasonable use of gloves or utensils by employees who handle unwrapped food;
- (4) The methods of food preparation, transportation, catering, storage, and serving;
- (5) The health of employees;
- (6) Animal and vermin control; and
- (7) The prohibition against the offering of unwrapped food samples to the general public unless the offering and acceptance of the samples are continuously supervised by an agent of the entity preparing or offering the samples or by an agent of the entity on whose premises the samples are made available. As used in this subdivision, 'food samples' means unwrapped food prepared and made available for sampling by and without charge to the general public for the purpose of promoting the food made available for sampling. This subdivision does not apply to unwrapped food prepared and offered in buffet, cafeteria, or other style in



exchange for payment by the general public or by the person or entity arranging for the preparation and offering of such unwrapped food. This subdivision shall not apply to open air produce markets nor to farmer market facilities operated on land owned or leased by the State of North Carolina or any local government.

The rules shall contain a system for grading facilities, such as Grade A, Grade B, and Grade C. The rules shall be written in a manner that promotes consistency in both the interpretation and application of the grading system."

(c) Effective January 1, 1996, G.S. 130A-39(b) reads as rewritten:

"(b) A local board of health may adopt a more stringent rule in an area regulated by the Commission for Health Services or the Environmental Management Commission where, in the opinion of the local board of health, a more stringent rule is required to protect the public health; otherwise, the rules of the Commission for Health Services or the rules of the Environmental Management Commission shall prevail over local board of health rules. However, a local board of health may not adopt a rule concerning the grading, grading, operating, and permitting of food and lodging facilities as listed in Part 6 of Article 8 of this Chapter and as defined in G.S. 130A-247(1), and a local board of health may adopt rules concerning wastewater collection, treatment and disposal systems which are not designed to discharge effluent to the land surface or surface waters only in accordance with G.S. 130A-335(c)."

(d) G.S. 130A-30(a) reads as rewritten:

"(a) The Commission for Health Services shall consist of 42 <sup>13</sup> members, four of whom shall be elected by the North Carolina Medical Society and eight <sup>nine</sup> of whom shall be appointed by the Governor."

(e) The Department of Environment, Health, and Natural Resources, in consultation with the North Carolina Restaurant Association, shall review all rules and forms that govern the sanitation of restaurants and other food handling establishments for vagueness, inconsistency, and lack of specificity and shall develop a plan to improve uniformity of interpretation and application of these rules across the State. The Department shall present the plan to the Commission for Health Services by December 31, 1996, along with any recommendations for rule modification. The Department, in consultation with the Association, shall continue to monitor and address the interpretation and application of the rules, forms, and other food service matters.

(f) G.S. 130A-247, as amended by Chapter 123 of the 1995 Session Laws, is amended by adding the following new subdivision to read:

"(7) 'Limited food services establishment' means an establishment as described in G.S. 130A-248(a4), with food handling operations that are restricted by rules adopted by the Commission pursuant to G.S. 130A-248(a4) and that prepares or serves food only in conjunction with amateur athletic events."

(g) G.S. 130A-248, as amended by Chapter 123 of the 1995 Session Laws, is amended by adding the following new subsection to read:



"(a4) For the protection of the public health, the Commission shall adopt rules governing the sanitation of limited food service establishments. In adopting the rules, the Commission shall not limit the number of days that limited food service establishments may operate. Limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by other charitable organizations. On and after January 1, 1996, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by organizations that have applied for exemption or are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code. On and after January 1, 1997, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by organizations that are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code."

(h) Notwithstanding any other provision of law, an establishment permitted as a limited food service establishment on the effective date of this act that does not meet the requirements of G.S. 130A-248(a4) may continue to operate as a limited food service establishment in accordance with the Commission's rules for not more than 60 days per year and only until January 1, 1997.

Requested by: Senators Martin of Pitt, Warren, Jordan, Kerr,  
Representatives Mitchell, Weatherly

#### **FUNDS FOR HEART DISEASE AND STROKE PREVENTION TASK FORCE**

**Sec. 26.9.** (a) Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, the sum of one hundred thousand dollars (\$100,000) for the 1995-96 fiscal year and the sum of one hundred thousand dollars (\$100,000) for the 1996-97 fiscal year shall be used to support the North Carolina Heart Disease and Stroke Prevention Task Force created under this section.

(b) The North Carolina Heart Disease and Stroke Prevention Task Force is created in the Division of Adult Health Promotion, Department of Environment, Health, and Natural Resources.

(c) The Task Force shall have 27 members. The Governor shall appoint the Chair, and the Vice-Chair shall be elected by the Task Force. The Director of the Division of Adult Health Promotion in the Department of Environment, Health, and Natural Resources, the Director of the Division of Medical Assistance in the Department of Human Resources, and the Director of the Division of Aging in the Department of Human Resources, or their designees, shall be members of the Task Force. Appointments to the Task Force shall be made as follows:

- (1) By the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as follows:

- a. Three members of the Senate;
  - b. A heart attack survivor;
  - c. A local health director;
  - d. A certified health educator;
  - e. A hospital administrator; and
  - f. A representative of the North Carolina Association of Area Agencies on Aging.
- (2) By the General Assembly upon the recommendation of the Speaker of the House of Representatives, as follows:
  - a. Three members of the House of Representatives;
  - b. A stroke survivor;
  - c. A county commissioner;
  - d. A licensed dietitian/nutritionist;
  - e. A pharmacist; and
  - f. A registered nurse.
- (3) By the Governor, as follows:
  - a. A practicing family physician, pediatrician, or internist;
  - b. A president or chief executive officer of a business upon recommendation of a North Carolina wellness council which is a member of the Wellness Councils of America;
  - c. A news director of a newspaper or television or radio station;
  - d. A volunteer of the North Carolina Affiliate of the American Heart Association;
  - e. A representative from the North Carolina Cooperative Extension Service;
  - f. A representative of the Governor's Council on Physical Fitness and Health; and
  - g. Two members at large.
- (d) Each appointing authority shall assure insofar as possible that its appointees to the Task Force reflect the composition of the North Carolina population with regard to ethnic, racial, age, gender, and religious composition.
- (e) The General Assembly and the Governor shall make their appointments to the Task Force not later than 30 days after the adjournment of the 1995 General Assembly, Regular Session 1995. A vacancy on the Task Force shall be filled by the original appointing authority, using the criteria set out in this section for the original appointment.
- (f) The Task Force shall meet at least quarterly or more frequently at the call of the Chair.
- (g) The Task Force Chair may establish committees for the purpose of making special studies pursuant to its duties, and may appoint non-Task Force members to serve on each committee as resource persons. Resource persons shall be voting members of the committees and shall receive subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6. Committees may meet with the frequency needed to accomplish the purposes of this section.
- (h) Members of the Task Force shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 120-3.1, 138-5 and 138-6, as applicable.

(i) A majority of the Task Force shall constitute a quorum for the transaction of its business.

(j) The Task Force may use funds allocated to it to establish two positions and for other expenditures needed to assist the Task Force in carrying out its duties.

(k) The Heart Disease and Stroke Prevention Task Force has the following duties:

- (1) To undertake a statistical and qualitative examination of the incidence of and causes of heart disease and stroke deaths and risks, including identification of subpopulations at highest risk for developing heart disease and stroke, and establish a profile of the heart disease and stroke burden in North Carolina.
- (2) To publicize the profile of the heart disease and stroke burden and its preventability in North Carolina.
- (3) To identify priority strategies which are effective in preventing and controlling risks for heart disease and stroke.
- (4) To identify, examine limitations of, and recommend to the Governor and the General Assembly changes to existing laws, regulations, programs, services, and policies to enhance heart disease and stroke prevention by and for the people of North Carolina.
- (5) To determine and recommend to the Governor and the General Assembly the funding and strategies needed to enact new or to modify existing laws, regulations, programs, services, and policies to enhance heart disease and stroke prevention by and for the people of North Carolina.
- (6) To adopt and promote a statewide comprehensive Heart Disease and Stroke Prevention Plan to the general public, State and local elected officials, various public and private organizations and associations, businesses and industries, agencies, potential funders, and other community resources.
- (7) To identify and facilitate specific commitments to help implement the Plan from the entities listed in subdivision (6) above.
- (8) To facilitate coordination of and communication among State and local agencies and organizations regarding current or future involvement in achieving the aims of the Heart Disease and Stroke Prevention Plan.
- (9) To receive and consider reports and testimony from individuals, local health departments, community-based organizations, voluntary health organizations, and other public and private organizations statewide, to learn more about their contributions to heart disease and stroke prevention, and their ideas for improving heart disease and stroke prevention in North Carolina.
- (l) The Task Force shall submit to the Governor and to the General Assembly a preliminary report by January 1, 1996; an interim report within the first week of the convening of the 1997 General Assembly; and a final report by October 1, 1997. The reports shall address the Plan, actions and resources needed to fully implement the Plan, and progress in achieving implementation of the Plan to reduce the occurrence of and burden from

heart disease and stroke in North Carolina. The reports shall include an accounting of funds expended and anticipated funding needs for full implementation of recommended plans and programs.

(m) Upon submission of its final report to the Governor and the 1997 General Assembly, the Task Force shall expire.

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

#### **ABOVEGROUND STORAGE TANKS INSPECTION AND MONITORING/DATA COLLECTION**

**Sec. 26.10.** (a) Of the funds appropriated to the Department of Environment, Health, and Natural Resources in this act for the 1995-96 fiscal year, the sum of three hundred thousand dollars (\$300,000) shall be used as follows:

- (1) \$250,000 shall be used to conduct periodic inspections at major oil terminal facilities, as defined in G.S. 143-215.77, in Mecklenburg County and the equipment at these facilities to determine whether oil or any other hazardous substance is being discharged into the environment and, at the facility and in the area surrounding the facility, to monitor the quality of the air, water, and soil and analyze air, water, and soil samples to determine the presence of toxic emissions, water quality degradation, or soil contamination.
- (2) \$50,000 shall be transferred to the Department of Crime Control and Public Safety to be used to establish a computerized aboveground storage tank inventory and release data base to maintain all reports it receives concerning the release of oil or hazardous substances and the information it receives on Tier Two, Emergency and Hazardous Chemical inventory forms pursuant to Section 312 of Title III of the Superfund Amendments and Reauthorization Act of 1986, as amended, 42 U.S.C. § 11022.

(b) Beginning October 1, 1995, and quarterly thereafter, the Department of Environment, Health, and Natural Resources shall submit a report of its inspection and monitoring activities pursuant to subsection (a) of this section to the Environmental Review Commission.

Requested by: Senators Martin of Pitt, Odom, Perdue, Plyler, Hobbs, McKoy, Jordan, Kerr, Representatives Mitchell, Weatherly

#### **ANIMAL WASTE SYSTEM COMPLIANCE INSPECTORS**

**Sec. 26.11.** (a) Of the funds appropriated to the Department of Environment, Health, and Natural Resources in this act, the sum of four hundred fifty-nine thousand two hundred ninety-two dollars (\$459,292) for the 1995-96 fiscal year and the sum of four hundred twenty-four thousand seven hundred ninety-two dollars (\$424,792) for the 1996-97 fiscal year shall be used for staff and operating expenses for the Department to conduct inspections, enforcement activities, and laboratory analyses to ensure that animal waste operations comply with the statutory and regulatory requirements for animal waste.

(b) The staff who conduct inspections pursuant to subsection (a) of this section shall cooperate with owners and operators of agricultural operations



and shall provide planning assistance and oversight to ensure conformity with animal waste requirements.

Requested by: Senators Cooper, Ballance, Speed, Plyler, Perdue, Odom, Representatives Holmes, Creech, Esposito

### **MULTI-COUNTY WATER CONSERVATION AND INFRASTRUCTURE DISTRICT**

**Sec. 26.12.** Effective upon ratification, Chapter 158 of the General Statutes is amended by adding a new Article to read:

#### **"ARTICLE 2A.**

##### **"Multi-County Water Conservation and Infrastructure District.**

##### **"§ 158-15.1. Multi-County Water Conservation and Infrastructure District.**

(a) There is established the Multi-County Water Conservation and Infrastructure District, which is a public authority for the purpose of the Local Government Budget and Fiscal Control Act.

(b) The member counties of the Multi-County Water Conservation and Infrastructure District are Bertie, Granville, Halifax, Martin, Northampton, Person, Vance and Warren.

(c) The governing body of the Multi-County Water Conservation and Infrastructure District is the Multi-County Water Commission, which has eight members. One shall be appointed by the board of commissioners of each member county for a three-year term.

(d) All monies received by the State of North Carolina for sale of water under the Roanoke River Basin Compact, if enacted, shall be paid to the Multi-County Water Conservation and Infrastructure District.

(e) The District may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any political subdivision of this State or any other state, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. The nature, amount and condition, if any, attendant upon any donation or grant accepted pursuant to this subsection together with the identity of the donor or grantor, shall be detailed in the annual audit of the District.

(f) At times specified by the Multi-County Water Commission, net revenues after operating expenses of the District shall be paid to the member counties according to the following formula: (i) one-half pro-rata based on population of each member county; and (ii) one-half pro-rata based on land area of each county.

(g) Member counties may use funds received under this section for public purposes relating to infrastructure development, economic development, and water conservation.

(h) The Commission may adopt such rules as may be needful for operation of its affairs, and shall employ and terminate personnel as if it were a county."

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Creech, Esposito

### **SOIL AND WATER ASSISTANCE TO SMALL, FAMILY FARMS**



**Sec. 26.13.** (a) Of the funds appropriated in this act to the Division of Soil and Water Conservation, Department of Environment, Health, and Natural Resources, the sum of four hundred twenty-seven thousand five hundred ten dollars (\$427,510) for the 1995-96 fiscal year and the sum of four hundred twenty-seven thousand five hundred ten dollars (\$427,510) for the 1996-97 fiscal year shall be used for staff and operating expenses for the Division to assist agricultural operations to meet the December 1997 requirements for animal waste management. When allocating these staff resources, the Division of Soil and Water Conservation shall give priority to small, family agricultural operations.

## **PART 26A. CAPITAL IMPROVEMENTS - GENERAL FUND**

**Sec. 26A.** The appropriations made by the 1995 General Assembly for capital improvements are for constructing, repairing, or renovating State buildings, utilities, and other capital facilities, for acquiring sites for them where necessary, and for acquiring buildings and land for State government purposes.

**Sec. 26A.1.** Appropriations from the General Fund for the 1995-96 fiscal year for use by the State departments, institutions, and agencies to provide for capital improvement projects according to the following schedule:

	<u>1995-96</u>	<u>1996-97</u>
<u>Capital Improvements</u>		
<b>Department of Administration (Total)</b>	<b>\$35,187,700</b>	<b>\$41,043,700</b>
1. Veterans Home Reserve - to Supplement Cost of Construction	660,000	
2. Indian Culture Center Various site improvements		175,000
3. Construction of New Prison Beds		
a. Design and Preliminary Site Work for Prison Facilities	7,500,000	
b. Match for FY 1995 Federal Funds for Construction of 60 Bed Female Boot Camp	637,643	
c. Match for FY 1996 Federal Funds for Construction of New Prison Beds (effective 10/15/95)	25,576,357	40,868,700
4. Electronic Intrusion System Install Electronic Intrusion System at N.C. Correctional Institution for Women	813,700	
<b>Department of Agriculture (Total)</b>	<b>2,257,200</b>	<b>4,000,000</b>
5. Dairy Facility - Cherry Farm		

Total Requirements	507,200	
Less: Timber Sales		
Receipts	<u>250,000</u>	257,200
6. Eastern N.C. Agricultural Center Continued Development	2,000,000	4,000,000
<b>Department of Crime Control and Public Safety (Total)</b>	<b>200,000</b>	
7. Kinston National Guard Armory Additional State match for bid overrun	200,000	
<b>Department of Cultural Resources (Total)</b>	<b>8,100,000</b>	<b>250,000</b>
8. Reserve for Land acquisition and development	3,000,000	
9. Elizabeth II State Historic Site	5,000,000	
10. Museum of Art-Facilities Planning		250,000
11. N.C. Pottery Center-Planning	100,000	
<b>Department of Human Resources (Total)</b>	<b>982,000</b>	<b>2,288,000</b>
12. Gaston Detention Center	270,000	
13. Northeast Detention Center		1,800,000
14. Eastern N.C. School for Deaf - Capital Improvements	712,000	488,000
<b>Department of Justice (Total)</b>	<b>1,915,400</b>	<b>4,091,200</b>
15. N.C. Justice Academy- Replace Blue Bell Building at N.C. Justice Academy		1,500,000
16. N.C. Justice Academy- Replace maintenance shed	445,400	
17. N.C. Justice Academy- Construct new classroom building		2,591,200
18. Western Justice Academy	1,470,000	
<b>Environment, Health, and Natural Resources (Total)</b>	<b>13,515,000</b>	<b>7,050,000</b>
19. State Parks System - Construction, acquisition, repairs and renovations	10,000,000	
20. North Carolina Aquariums Planning	300,000	1,000,000

21. Museum of Natural Science - Exhibits Planning and Design	400,000	
22. Water Resources Projects	2,065,000	
23. Marine Fisheries - Replacement of law enforcement vessel		300,000
24. Water and Sewer Demonstration Projects - New technology projects particularly in the area of environmental disposal and system creation		5,000,000
25. Forestry Headquarters Reserve - Replacement of Facilities at County and District Headquarters sites	750,000	750,000
<b>State Budget and Management (Total)</b>	<b>2,285,000</b>	<b>2,000,000</b>
26. Global TransPark Engineering and design for Kinston Regional Jet Port Military Construction Project (State Match)	285,000	
27. Reserve for cleanup of hazardous waste sites	2,000,000	2,000,000
<b>UNC Board of Governors (Total)</b>	<b>49,080,200</b>	<b>96,544,100</b>
28. NC State University Centennial Center Funds	3,500,000	3,500,000
29. UNC-Chapel Hill/N.C. State University Marine Science Facility	500,000	7,300,000
30. UNC-TV Southeastern Tower in Lumberton	500,000	1,480,000
31. UNC-Chapel Hill Law School	5,057,600	5,000,000
32. UNC-Chapel Hill School of Pharmacy Planning		1,000,000
33. East Carolina University- Life Sciences Building	2,700,000	4,423,800
34. NC A&T State University Classroom Building Planning		1,000,000
35. UNC-Asheville Kellogg Center	500,000	
36. UNC-General Administration Administrator's Academy		9,871,100
37. NC State University 4-H Environmental Education Center		2,545,300
38. NC Central University Education Building	6,031,700	9,600,000
39. Elizabeth City State University		

	Vaughan Center Addition	2,190,500	
40.	Fayetteville State University		
	Student Center Addition	3,790,900	
41.	UNC-Chapel Hill		
	Center for Dramatic Art		8,394,800
42.	UNC-Chapel Hill		
	Medical Biomolecular and Neuro-		
	sciences Research Building		1,000,000
43.	Appalachian State University		
	Convocation Center	10,000,000	10,601,100
44.	UNC Wilmington		
	Marine Science Building	6,000,000	10,000,000
45.	UNC Charlotte		
	Library Addition	4,500,000	16,071,500
46.	NC School of the Arts		
	Student Activity Center		2,566,000
47.	NC State University		
	School of Agriculture (includes		
	\$500,000 planning funds for		
	Toxicology Building)	6,000,000	
<b>TOTAL CAPITAL</b>		<b>\$113,522,500</b>	<b>\$157,267,000</b>

## PART 27. CAPITAL AND SPECIAL PROVISIONS

Requested by: Senators Warren, Gulley, Plyler, Perdue, Odom, Representatives Ives, Lemmond, Culpepper, Holmes, Creech, Esposito

**NORTH CAROLINA INFORMATION HIGHWAY FUNDS**

Sec. 27. (a) The funds appropriated in this act to the Office of the State Controller for the operation of the North Carolina Information Highway shall be used only for costs incurred by the Office of the State Controller related to the operations and support of the North Carolina Information Highway. No funds appropriated in this act shall be expended to pay Minimum Monthly Usage charges for North Carolina Information Highway services until such time as the Controller certifies to the General Assembly that the network is capable of performing all services for which the State has contracted and that the network equipment and service providers are capable of providing full and adequate support for the network's functions and to all qualified users.

(b) No State funds may be used or encumbered to expand the sites for the North Carolina Information Highway beyond the 74 sites approved by the General Assembly. No expansion of sites for the North Carolina Information Highway shall obligate the North Carolina General Assembly for future additional State appropriations. If other non-state funds are used to expand sites beyond the 74 approved sites, no State funds may be used or encumbered for those sites. However, if other State agencies excluding the 74 sites have received State funds prior to June 30, 1995, to allow them to set up a site or to come on line with the North Carolina Information Highway, then that agency may purchase equipment or come on line; but,

the General Assembly shall not be obligated for future or continuing State appropriations for any site beyond the 74 approved sites.

(c) Beginning October 1, 1995, the Controller shall report quarterly to the Joint Legislative Commission on Governmental Operations regarding the costs incurred by the Office of the State Controller related to the operations and support of the North Carolina Information Highway, and shall make a final report to the General Government Appropriations Subcommittees for the Senate and the House of Representatives and to the 1995 General Assembly, 1996 Regular Session.

(d) For purposes of this section the term "North Carolina Information Highway" means the new, high-capacity optical fiber network that uses SONET transmission technology and ATM switching.

Requested by: Senators Warren, Gulley, Representatives Ives, Lemmond, Culpepper

#### **DATA PROCESSING RESERVE**

**Sec. 27.1.** The Office of State Controller and the Office of State Budget and Management shall jointly study the State Computer Center, demand estimates, and shall submit to the 1995 General Assembly, Regular Session 1996, by May 1, 1996, a comprehensive report detailing projected cost needs for the 1996-97 fiscal year and the funding source for those needs in excess of the level funded in Chapter 324 of the 1995 Session Laws, the Continuation Budget Appropriations Act of 1995, and in this act.

Requested by: Representatives Holmes, Creech, Esposito

#### **APPALACHIAN STATE UNIVERSITY'S MASTER OF SCHOOL ADMINISTRATION PROGRAM CONTINUED**

**Sec. 27.2.** (a) G.S. 116-74.21(b) reads as rewritten:

"(b) No more than ~~seven~~ eight school administrator programs shall be established under the competitive proposal program. In selecting campus sites, the Board of Governors shall be sensitive to the racial, cultural, and geographic diversity of the State. Special priority shall be given to the following factors: (i) the historical background of the institutions in training educators; (ii) the ability of the sites to serve the geographic regions of the State, such as, the far west, the west, the triad, the piedmont, and the east; and, (iii) whether the type of roads and terrain in a region make commuting difficult. A school administrator program may provide for instruction at one or more campus sites."

(b) The Board of Governors of The University of North Carolina shall continue the Master of School Administrators program at Appalachian State University as one of the eight school administrator programs established pursuant to G.S. 116-74.21.

Requested by: Representatives Holmes, Creech, Esposito

#### **PIEDMONT SPORTS AND ENTERTAINMENT FACILITIES STUDY COMMISSION**

**Sec. 27.3.** Section 28.21 of Chapter 769 of the 1993 Session Laws, Regular Session 1994, reads as rewritten:



"Sec. 28.21. (a) The Piedmont Sports and Entertainment Study Commission is created. The Commission shall consist of 35 members. The boards of county commissioners of Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, Stokes, Surry, and Yadkin Counties shall, each, appoint two members of the Commission; one of whom shall be a county commissioner of that county and one of whom is a resident of that county recommended by the chamber of commerce serving that county. Eleven members shall be appointed by the Chair of the Commission. The chair and vice-chair of the Piedmont State Legislative Caucus, as the Caucus existed during the ~~1994~~ 1995 Regular Session, shall be ex officio members of the Commission and shall serve, respectively, as the chair and vice-chair of the Commission.

(b) The Commission shall study the need for and feasibility of creating regional sports and entertainment facilities to serve the Piedmont area of the State; and, if the Commission determines the facilities are needed and their creation feasible, the best method to establish an Authority to implement these facilities.

(c) The Commission shall submit a report of its findings and recommendations to the General Assembly on or before the first day of the 1995 General ~~Assembly~~ Assembly, Regular Session 1996, by filing the report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Upon filing its report, the Commission shall terminate.

(d) The Commission may meet at any time upon the call of the chair. The Commission may meet, with the approval of the Legislative Services Commission, in the State Legislative Building or the Legislative Office Building.

(e) Notwithstanding any other provision of law, members of the Commission shall receive no per diem compensation, but shall receive reimbursement of subsistence and travel expenses, as provided by law.

(f) The Commission may contract for professional, clerical, or consultant services. The Department of Commerce shall assign professional and clerical staff to assist in the work of the Commission.

(g) When a vacancy occurs in the membership of the Commission, the vacancy shall be filled by the original appointing authority employing the same criteria as used in the original appointment.

(h) From the funds appropriated to the Department of Commerce for fiscal year ~~1994-95~~, 1995-96, the sum of twenty-five thousand dollars (\$25,000) shall be used for the expenses of the Commission."

Requested by: Representatives Holmes, Creech, Esposito

#### **DELIVERY OF WARRANTS AND DISBURSEMENTS FOR NON-STATE ENTITIES**

**Sec. 27.4.** G.S. 143-3.2(a) reads as rewritten:

"§ 143-3.2. *Issuance of warrants upon State Treasurer, Treasurer; delivery of warrants and disbursements for non-State entities.*

(a) The State Controller shall have the exclusive responsibility for the issuance of all warrants for the payment of money upon the State Treasurer. All warrants upon the State Treasurer shall be signed by the State

Controller, who before issuing them shall determine the legality of payment and the correctness of the accounts. All warrants issued for non-State entities shall be delivered by the appropriate agency to the entity's legally designated recipient by United States mail or its equivalent, including electronic funds transfer.

When the State Controller finds it expedient to do so because of a State agency's size and location, the State Controller may authorize a State agency to make expenditures through a disbursing account with the State Treasurer. The State Controller shall authorize the Judicial Department and the General Assembly to make expenditures through such disbursing accounts. All disbursements made to non-State entities shall be delivered by the appropriate agency to the entity's legally designated recipient by United States mail or its equivalent, including electronic funds transfer. All deposits in these disbursing accounts shall be by the State Controller's warrant. A copy of each voucher making withdrawals from these disbursing accounts and any supporting data required by the State Controller shall be forwarded to the Office of the State Controller monthly or as otherwise required by the State Controller. Supporting data for a voucher making a withdrawal from one of these disbursing accounts to meet a payroll shall include the amount of the payroll and the employees whose compensation is part of the payroll.

A central payroll unit operating under the Office of the State Controller may make deposits and withdrawals directly to and from a disbursing account. The disbursing account shall constitute a revolving fund for servicing payrolls passed through the central payroll unit.

The State Controller may use a facsimile signature machine in affixing his signature to warrants.

(b) The State Treasurer may impose on an agency a fee of fifteen dollars (\$15.00) for each check drawn against the agency's disbursing account that causes the balance in the account to be in overdraft or while the account is in overdraft. The financial officer shall pay the fee from non-State or personal funds to the General Fund to the credit of the miscellaneous non-tax revenue account by the agency."

Requested by: Senators Warren, Gulley, Representatives Ives, Lemmond, Culpepper

### **LOCAL HISTORICAL ORGANIZATIONS GRANTS**

**Sec. 27.5.** Of the funds appropriated in this act for the 1995-96 fiscal year to the Department of Cultural Resources the sum of three million dollars (\$3,000,000) shall be distributed as grants-in-aid to nonprofit historical organizations, nonprofit museums, or local governmental entities in accordance with administrative guidelines issued by the Secretary of the Department of Cultural Resources. The purpose of the grants shall be to encourage, through the use of grants-in-aid, the protection, preservation, and interpretation of historic assets with local or regional significance. Priority consideration shall be given to the local historical organization's educational objectives. Grants shall be limited to amounts of one hundred thousand dollars (\$100,000) or less.

Requested by: Senators Warren, Gulley, Representatives Ives, Lemmond, Culpepper

### **LOCAL CULTURAL AND ARTISTIC ORGANIZATIONS GRANTS**

**Sec. 27.6.** Of the funds appropriated in this act for the 1995-96 fiscal year to the Department of Cultural Resources the sum of three million dollars (\$3,000,000) shall be distributed as grants-in-aid to nonprofit local cultural or artistic organizations or local governmental entities in accordance with administrative guidelines issued by the Secretary of the Department of Cultural Resources. The purpose of the grants shall be to support and promote, through the use of grants-in-aid, local cultural and artistic organizations with local or regional significance. Priority consideration shall be given to the local cultural or artistic organization's educational objectives. Grants shall be limited to amounts of one hundred thousand dollars (\$100,000) or less.

Requested by: Representatives Creech, Holmes, Esposito, Redwine, Senators Perdue, Plyler, Odum

### **IMPROVEMENT OF THE ADMINISTRATIVE RULES PROCESS/LEGISLATIVE OVERSIGHT/FISCAL ACCOUNTABILITY**

#### **Sec. 27.8 LEGISLATION IMPROVING THE ADMINISTRATIVE RULES PROCESS**

##### **LEGISLATIVE OVERSIGHT**

(a) Chapter 120 of the General Statutes is amended by adding a new Article to read:

#### **"ARTICLE 12K.**

**"Joint Legislative Administrative Procedure Oversight Committee.**

**"§ 120-70.100. *Creation and membership of Joint Legislative Administrative Procedure Oversight Committee.***

**(a) The Joint Legislative Administrative Procedure Oversight Committee is established. The Committee consists of 16 members as follows:**

- (1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least three of whom are members of the minority party.**
- (2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.**

**(b) Members of the Committee shall serve a term of two years beginning on January 15 of each odd-numbered year. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.**

**"§ 120-70.101. *Purpose and powers of Committee.***

**The Joint Legislative Administrative Procedure Oversight Committee has the following powers and duties:**

- (1) To review rules to which the Rules Review Commission has objected to determine if statutory changes are needed to enable the agency to fulfill the intent of the General Assembly.
- (2) To receive reports prepared by the Rules Review Commission containing the text and a summary of each rule approved by the Commission.
- (3) To prepare a notebook that contains the administrative rules that have been approved by the Rules Review Commission and reported to the Committee and to notify each member of the General Assembly of the availability of the notebook.
- (4) To review State regulatory programs to determine if the programs overlap, have conflicting goals, or could be simplified and still achieve the purpose of the regulation.
- (5) To review existing rules to determine if the rules are necessary or if the rules can be streamlined.
- (6) To review the rule-making process to determine if the procedures for adopting rules give the public adequate notice of and information about proposed rules.
- (7) To review any other concerns about administrative law to determine if statutory changes are needed.
- (8) To report to the General Assembly at the beginning of each regular session concerning the Committee's activities and any recommendations for statutory changes.

"§ 120-70.102. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Administrative Procedure Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Legislative Services Commission, through the Legislative Administrative Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be paid by the Committee.

"§ 120-70.103. Exercise of duty to maintain a notebook of approved rules.

With the approval of the Legislative Services Commission, the Joint Legislative Administrative Procedure Oversight Committee may delegate to the Legislative Library the duty to maintain a notebook containing rules



approved by the Rules Review Commission. Whether the notebook is maintained by the Committee or by the Legislative Library, rules shall be filed in the notebook in accordance with the numbering system used in the North Carolina Administrative Code."

#### **AGENCY FISCAL NOTE REQUIRED BEFORE PUBLISHING PROPOSED**

#### **PERMANENT RULE CHANGE OF SUBSTANTIAL ECONOMIC IMPACT**

(b) G.S. 150B-21.4 is amended by adding two new subsections to read:

"(b1) Substantial Economic Impact. -- Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency must obtain a fiscal note for the proposed rule change from the Office of State Budget and Management or prepare a fiscal note for the proposed rule change and have the note approved by that Office. If an agency requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change may prepare a fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.

If an agency prepares the required fiscal note, the agency must submit the note to the Office of State Budget and Management for review. The Office of State Budget and Management must review the fiscal note within 14 days after it is submitted and either approve the note or inform the agency in writing of the reasons why it does not approve the fiscal note. After addressing these reasons, the agency may submit the revised fiscal note to that Office for its review. If an agency is not sure whether a proposed rule change would have a substantial economic impact, the agency may ask the Office of State Budget and Management to determine whether the proposed rule change has a substantial economic impact.

As used in this subsection, the term 'substantial economic impact' means an aggregate financial impact on all persons affected of at least five million dollars (\$5,000,000) in a 12-month period.

(b2) Content. -- A fiscal note required by subsection (b1) of this section must contain the following:

- (1) A description of the persons who would be affected by the proposed rule change.
- (2) A description of the types of expenditures that persons affected by the proposed rule change would have to make to comply with the rule and an estimate of these expenditures.
- (3) A description of the purpose and benefits of the proposed rule change.
- (4) An explanation of how the estimate of expenditures was computed."

#### **PROCEDURE FOR ADOPTING A PERMANENT RULE**



(c) G.S. 150B-21.1 reads as rewritten:

"§ 150B-21.1. *Procedure for adopting a temporary rule.*

(a) Adoption. -- An agency may adopt a temporary rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical when it finds that adherence to the notice and hearing requirements of this Part would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

- (1) A serious and unforeseen threat to the public health, safety, or welfare.
- (2) The effective date of a recent act of the General Assembly or the United States Congress.
- (3) A recent change in federal or State budgetary policy.
- (4) A federal regulation.
- (5) A court order.
- (6) The need for the rule to become effective the same date as the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan.

An agency must prepare a written statement of its findings of need for a temporary rule. The statement must be signed by the head of the agency adopting the rule.

~~An agency must begin rule-making proceedings for a permanent rule by the day it adopts a temporary rule. An agency begins rule-making proceedings for a permanent rule by submitting to the Codifier of Rules written notice of its intent to adopt a permanent rule.~~

(b) Review. -- When an agency adopts a temporary rule it must submit the ~~rule, rule and~~ the agency's written statement of its findings of the need for the ~~rule, and the notice of intent to adopt a permanent rule~~ to the Codifier of Rules. Within one business day after an agency submits a temporary rule, the Codifier of Rules must review the agency's written statement of findings of need for the rule to determine whether the statement of need meets the criteria listed in subsection (a). In reviewing the statement, the Codifier of Rules may consider any information submitted by the agency or another person. If the Codifier of Rules finds that the statement meets the criteria, the Codifier of Rules must notify the head of the agency and enter the rule in the North Carolina Administrative Code.

If the Codifier of Rules finds that the statement does not meet the criteria, the Codifier of Rules must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Codifier of Rules must review the additional findings or new statement within one business day after the agency submits the additional findings or new statement. If the Codifier of Rules again finds that the statement does not meet the criteria listed in subsection (a), the Codifier of Rules must immediately notify the head of the agency.

If an agency decides not to provide additional findings or submit a new statement when notified by the Codifier of Rules that the agency's findings of need for a rule do not meet the required criteria, the agency must notify the Codifier of Rules of its decision. The Codifier of Rules must then enter

the rule in the North Carolina Administrative Code on the sixth business day after receiving notice of the agency's decision.

(c) Standing. -- A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) and whether the rule meets the standards in G.S. 150B-21.9 that apply to review of a permanent rule. The court ~~may~~ shall not grant an ex parte temporary restraining order.

Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. -- A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

- (1) The date specified in the rule or 180 days from the date the rule becomes effective, whichever comes first, rule.
- (2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.
- (3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule, if the Commission objects to the permanent rule.

(e) Publication. -- When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register. Publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings for a permanent rule that does not differ substantially from the published temporary rule."

(d) G.S. 150B-21.2 reads as rewritten:

"§ 150B-21.2. Procedure for adopting a permanent rule.

(a) Steps. -- Before an agency adopts a permanent rule, it must take the following actions:

- (1) Publish a notice of rule-making proceedings in the North Carolina Register, unless the proposed rule is substantially the same as a temporary rule published in the North Carolina Register.
- (2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.
- (3) Publish the text of the proposed rule in the North Carolina Register.
- (4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.
- (5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

**Notice.** -- Before an agency adopts a permanent rule, it must publish notice of its intent to adopt a permanent rule in the North Carolina Register and as required by any other law. The notice published in the North Carolina Register must include all of the following:

- (1) Either the text of the proposed rule or a statement of the subject matter of the proposed rule making.
- (2) A short explanation of the reason for the proposed action.
- (3) A citation to the law that gives the agency the authority to adopt the proposed rule, if the notice includes the text of the proposed rule, or a citation to the law that gives the agency the authority to adopt a rule on the subject matter of the proposed rule making, if the notice includes only a statement of the subject matter of the proposed rule making.
- (4) The proposed effective date of the proposed rule, if the notice includes the text of the proposed rule, or the proposed effective date of a rule adopted on the subject matter of the proposed rule making, if the notice includes only a statement of the subject matter of the proposed rule making.
- (5) The date, time, and place of any public hearing scheduled on the proposed rule or subject matter of the proposed rule making.
- (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (c) requires the agency to hold a public hearing on the proposed rule when requested to do so.
- (7) The period of time during which and the person to whom written comments may be submitted on the proposed rule or subject matter of the proposed rule making.
- (8) If a fiscal note has been prepared for the proposed rule or will be prepared when a rule is proposed on the subject matter of the proposed rule making, a statement that a copy of the fiscal note can be obtained from the agency.

(b) Notice of Rule-Making Proceedings. -- A notice of rule-making proceedings published in the North Carolina Register must include all of the following:

- (1) A statement of the subject matter of the proposed rule making.
- (2) A short explanation of the reason for the proposed action.
- (3) A citation to the law that gives the agency the authority to adopt a rule on the subject matter of the proposed rule making.
- (4) The person to whom questions or written comments may be submitted on the subject matter of the proposed rule making.

Publication in the North Carolina Register of an agency's rule-making agenda satisfies the requirements of this subsection if the agenda includes the information required by this subsection.

(c) Text After Notice of Rule-Making Proceedings. -- A notice of the proposed text of a rule must include all of the following:

- (1) The text of the proposed rule.
- (2) A short explanation of the reason for the proposed rule.
- (3) A citation to the law that gives the agency the authority to adopt the rule.

- (4) The proposed effective date of the rule.
- (5) The date, time, and place of any public hearing scheduled on the rule.
- (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (c) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
- (7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.
- (8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.

An agency shall not publish the proposed text of a rule until at least 60 days after the date the notice of rule-making proceedings for the proposed rule was published in the North Carolina Register.

~~(b)~~ (d) Mailing List. -- An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes a rule-making notice in the North Carolina Register, Register a notice of rule-making proceedings or the text of a proposed rule, it must mail a copy of the notice or text to each person on the mailing list who has requested notice of rule-making proceedings on the rule or the subject matter for rule making described in the notice, notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

~~(c)~~ (e) Hearing. -- An agency must hold a public hearing on a rule it proposes to adopt in two circumstances and may hold a public hearing in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decide to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published.

An agency must hold a public hearing on a rule it proposes to adopt in the following two circumstances:

- (1) The agency publishes a statement of the subject matter of the proposed rule making in the notice in the North Carolina Register.
- (2) The if the agency publishes the text of the proposed rule in the notice in the North Carolina Register and all the following apply:
  - a. (1) The notice of rule-making proceedings does not schedule a public hearing on the proposed rule.
  - b. (2) Within 15 days after the notice is published, the The agency receives a written request for a public hearing on the proposed rule, rule within 15 days after the notice of rule-making proceedings is published.
  - c. The proposed rule is not part of a rule-making proceeding the agency initiated by publishing a statement of the subject matter of proposed rule making.



- d. (3) The proposed text is not a changed version of proposed text the agency previously published in the course of rule-making proceedings but did not adopt.

An agency may hold a public hearing on a proposed rule in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published.

~~(d) Text After Subject-Matter Notice. -- When an agency publishes notice of the subject matter of proposed rule making in the North Carolina Register, it must subsequently publish in the North Carolina Register the text of the rule it proposes to adopt as a result of the public hearing and of any comments received on the subject matter. An agency may not publish the proposed text of a rule for which it published a subject-matter notice before the public hearing on the subject matter.~~

(e) (f) Comments. -- An agency must accept comments on a notice of proposed rule-making proceedings published in the North Carolina Register until the text of the proposed rule that results from the notice is published. An agency must accept comments on the text of a proposed rule that is published in the North Carolina Register and that requires a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must accept comments on the text of a any other proposed rule published in the North Carolina Register for at least 30 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must accept comments on a statement of the subject matter of proposed rule making until the public hearing on the subject matter. An agency must consider fully all written and oral comments received.

(f) (g) Adoption. -- An agency may shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and may shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. An agency may shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (e), (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

- (1) Affects the interests of persons who, based on either the notice published in the North Carolina Register of rule-making proceedings or the proposed text of the rule, rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.



- (2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.
- (3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it ~~may~~ shall not take subsequent action on the rule without following the procedures in this Part.

(g) (h) Explanation. -- An agency must issue a concise written statement explaining why the agency adopted a rule if, within 30 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule.

(h) (i) Record. -- An agency must keep a record of a rule-making proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, and any written explanation made by the agency for adopting the rule."

#### RULES REVIEW COMMISSION ROLE STRENGTHENED

(e) G.S. 150B-21.3 reads as rewritten:

"§ 150B-21.3. *Effective date of rules.*

(a) Temporary Rule. -- A temporary rule becomes effective on the date the Codifier of Rules enters the rule in the North Carolina Administrative Code.

(b) Permanent Rule. -- A permanent rule approved by the Commission becomes effective ~~five business days after the Commission delivers the rule to the Codifier of Rules, unless the agency adopting the rule specifies a later effective date. If the agency specifies a later effective date, the rule becomes effective on that date, on the thirty-first legislative day of the next regular session of the General Assembly that begins at least 25 days after the date the Commission approved the rule, unless a later effective date applies under this subsection. If a bill that specifically disapproves the rule is introduced in either house of the General Assembly before the thirty-first legislative day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule. If the agency adopting the rule specifies a later effective date than the date that would otherwise apply under this subsection, the later date applies.~~ A permanent rule that is not approved by the Commission ~~becomes effective five business days after the agency adopting the rule delivers the rule to the Codifier of Rules, unless the agency adopting the rule specifies a later effective date. If the agency specifies a later effective date, the rule becomes effective on that date, or that is specifically disapproved by a bill ratified by the General Assembly before it becomes effective does not become effective.~~

A bill specifically disapproves a rule if it contains a provision that refers to the rule by appropriate North Carolina Administrative Code citation and states that the rule is disapproved. Notwithstanding any rule of either house of the General Assembly, any member of the General Assembly may introduce a bill during the first 30 legislative days of any regular session to disapprove a rule that has been approved by the Commission and that either

has not become effective or has become effective by executive order under subsection (c) of this section.

(c) Executive Order Exception. -- The Governor may, by executive order, make effective a permanent rule that has been approved by the Commission and has not become effective under subsection (b) of this section upon finding that it is necessary that the rule become effective in order to protect public health, safety, or welfare. A rule made effective by executive order becomes effective on the date the order is issued or at a later date specified in the order. When the Codifier of Rules enters in the North Carolina Administrative Code a rule made effective by executive order, the entry must reflect this action.

A rule that is made effective by executive order remains in effect unless it is specifically disapproved by the General Assembly in a bill ratified on or before the day of adjournment of the regular session of the General Assembly that begins at least 25 days after the date the executive order is issued. A rule that is made effective by executive order and that is specifically disapproved by a bill ratified by the General Assembly is repealed as of the date specified in the bill. If a rule that is made effective by executive order is not specifically disapproved by a bill ratified by the General Assembly within the time set by this subsection, the Codifier of Rules must note this in the North Carolina Administrative Code.

(d) Legislative Day and Day of Adjournment. -- As used in this section:

- (1) A 'legislative day' is a day on which either house of the General Assembly convenes in regular session.
- (2) The 'day of adjournment' of a regular session held in an odd-numbered year is the day the General Assembly adjourns by joint resolution for more than 10 days.
- (3) The 'day of adjournment' of a regular session held in an even-numbered year is the day the General Assembly adjourns sine die.

(e) OSHA Standard. -- A permanent rule concerning an occupational safety and health standard that is adopted by the Occupational Safety and Health Division of the Department of Labor and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor becomes effective on the date the Division delivers the rule to the Codifier of Rules, unless the Division specifies a later effective date. If the Division specifies a later effective date, the rule becomes effective on that date."

(f) G.S. 150B-21.9(a) reads as rewritten:

"(a) Standards. -- The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to fulfill a duty delegated to the agency by the General Assembly. Assembly, when considered in light of the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed and the legislative intent of the General Assembly in delegating the duty.

The Commission may determine if a rule submitted to it was adopted in accordance with Part 2 of this Article. The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

The Commission must notify the agency that adopted the rule if it determines that a rule was not adopted in accordance with Part 2 of this Article and must return the rule to the agency. Entry of a rule in the North Carolina Administrative Code after review by the Commission is conclusive evidence that the rule was adopted in accordance with Part 2 of this Article."

(g) G.S. 150B-21.11, as amended by Section 4 of Chapter 415 of the 1995 Session Laws, reads as rewritten:

"§ 150B-21.11. *Procedure when Commission approves permanent rule.*

(a) When the Commission approves a permanent rule, it must notify the agency that adopted the rule of the Commission's ~~approval and must approval~~, deliver the approved rule to the Codifier of ~~Rules, Rules, and~~ include the text of the approved rule and a summary of the rule in its next report to the Joint Legislative Administrative Procedure Oversight Committee. ~~The Commission must deliver an approved rule by the end of the month in which the Commission approved the rule, unless the agency asks the Commission to delay the delivery of the rule.~~

~~(b) When the Commission approves a permanent rule that would~~ If the approved rule will increase or decrease expenditures or revenues of a unit of local government, the Commission ~~shall~~ must also notify the Governor of the Commission's approval of the rule and deliver a copy of the approved rule to the Governor by the end of the month in which the Commission approved the rule."

(h) G.S. 150B-21.12 reads as rewritten:

"§ 150B-21.12. *Procedure when Commission objects to a permanent rule.*

(a) Action. -- When the Commission objects to a permanent rule, it must send the agency that adopted the rule a written statement of the objection and the reason for the objection. The agency that adopted the rule must take one of the following actions:

- (1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.
- (2) Submit a written response to the Commission indicating that the agency has decided not to change the rule.

(b) Time Limit. -- An agency that is not a board or commission must take one of ~~these~~ the actions listed in subsection (a) of this section within 30 days after receiving the Commission's statement of objection. A board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting, whichever comes later.

(c) Changes. -- When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission

must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection.

(d) Return of Rule. -- A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it may send to the President of the Senate and each member of the General Assembly a report of its objection to the rule, must notify the Codifier of Rules of its action and must send a copy of the record of the Commission's review of the rule to the Joint Legislative Administrative Procedure Oversight Committee in its next report to that Committee. If the rule that is returned would have increased or decreased expenditures or revenues of a unit of local government, the Commission must also notify the Governor of its action and must send a copy of the record of the Commission's review of the rule to the Governor. The record of review consists of the rule, the Commission's letter of objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule.

~~(b) Entry In Code. -- When the Commission returns a rule to which it has objected to the agency that adopted the rule, the Commission must notify the Codifier of Rules of its action and of the basis of the Commission's objection. An agency whose rule is returned may file the rule with the Codifier of Rules. When the Codifier of Rules enters in the North Carolina Administrative Code a rule to which the Commission objected, the entry must reflect the Commission's objection and must state the standard on which the Commission based its objection."~~

(i) G.S. 150B-21.15 is repealed. This subsection does not abate any action or appeal brought under G.S. 150B-21.15 prior to the effective date of this section.

#### **RULES REVIEW COMMISSION'S MONTHLY REPORT TO JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE**

(j) Part 3 of Article 2B of Chapter 150B of the General Statutes is amended by adding a new section to read:

"§ 150B-21.16. Report to Joint Legislative Administrative Procedure Oversight Committee.

The Commission must make monthly reports to the Joint Legislative Administrative Procedure Oversight Committee. The reports are due by the last day of the month. A report must include the rules approved by the Commission at its meeting held in the month in which the report is due and the rules the Commission returned to agencies during that month after the Commission objected to the rule. A report must include any other information requested by the Joint Legislative Administrative Procedure Oversight Committee. When the Commission sends a report to the Joint Legislative Administrative Procedure Oversight Committee, the Commission must send a copy of the report to the Codifier of Rules."

#### **PUBLISHING AND CODIFYING OF RULES**



(k) G.S. 150B-21.17(a) reads as rewritten:

"(a) Content. -- The Codifier of Rules must publish the North Carolina Register. The North Carolina Register must be published at least two times a month and must contain the following:

(1) Temporary rules entered in the North Carolina Administrative Code.

(4) (1a) Notices of ~~proposed adoptions~~ rule-making proceedings, the text of ~~proposed rules~~, rules, and the text of permanent rules approved by the Commission.

(2) Notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165.

(3) Executive orders of the Governor.

(4) Final decision letters from the United States Attorney General concerning changes in laws that affect voting in a jurisdiction subject to section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H.

(5) Orders of the Tax Review Board issued under G.S. 105-241.2.

(6) Other information the Codifier determines to be helpful to the public."

(l) G.S. 150B-21.19 reads as rewritten:

"§ 150B-21.19. *Requirements for including rule in Code.*

To be acceptable for inclusion in the North Carolina Administrative Code, a rule must:

(1) Cite the law under which the rule is adopted.

(2) Be signed by the head of the agency or the rule-making coordinator for the agency that adopted the rule.

(3) Be in the physical form specified by the Codifier of Rules.

(4) Have been reviewed approved by the Commission, if the rule is a permanent rule."

#### CHANGES IN EXEMPTIONS FROM RULE MAKING

(m) G.S. 150B-1(d) reads as rewritten:

"(d) Exemptions from Rule Making. -- Article 2A of this Chapter does not apply to the following:

(1) The Commission.

(2) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-10 and G.S. 104G-11.

(3) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-13 and G.S. 130B-14.

(4) The Department of Revenue, except that Parts 3 and 4 of Article 2A apply to the Department, with respect to the notice and hearing requirements contained in Part 2 of Article 2A.

(5) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(6) The Department of Correction, with respect to matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees."

#### CONFORMING CHANGES



(n) [Employment Security Commission] G.S. 96-4(b) reads as rewritten:

"(b) Regulations and General and Special Rules. -- General and special rules may be adopted, amended, or rescinded by the Commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given by mail to the last known address in cases of special rules, or by publication as herein provided, and by one publication as herein provided as to general rules. The Commission shall not take final action on a general or special rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1), until 60 days after the Office of State Budget and Management has prepared a fiscal note for the rule. General rules shall become effective 10 days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this State. Special rules shall become effective 10 days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Before the adoption, amendment, or repeal of any permanent regulation, the Commission shall publish notice of the public hearing and offer any person an opportunity to present data, opinions, and arguments. The notice shall be published in one or more newspapers of general circulation in this State at least 10 days before the public hearing and at least 20 days prior to the proposed effective date of the proposed permanent regulation. The published notice of public hearing shall include the time and place of the public hearing; a statement of the manner in which data, opinions, and arguments may be submitted to or before the Commission; a statement of the terms or substance of the proposed regulation; a statement of whether a fiscal note has been or will be prepared for the proposed regulation; and the proposed effective date of the regulation. Any permanent regulation adopted after following the above procedure shall become effective on its effective date and after it is published in the manner provided for in subsection (c) as well as such additional publication as the Commission deems appropriate. Additionally, the Commission shall provide notice of adoption by mail to the last known addresses of all persons who submitted data, opinions, or arguments to the Commission with respect to the regulation. Temporary regulations may be adopted, amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission but shall remain in force for no longer than 120 days."

(o) [Industrial Commission] G.S. 97-80(a) reads as rewritten:

"(a) The Commission may make rules, not inconsistent with this Article, for carrying out the provisions of this Article. The Commission shall request the Office of State Budget and Management to prepare a fiscal note for a proposed new or amended rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The Commission shall not take final action on a proposed rule change that has a substantial economic impact until at least 60 days after the fiscal note has been prepared.

Processes, procedure, and discovery under this Article shall be as summary and simple as reasonably may be."

(p) [Department of Revenue] G.S. 105-262 reads as rewritten:

"§ 105-262. Rules.

(a) The Secretary of Revenue may adopt rules needed to administer a tax collected by the Secretary or to fulfill another duty delegated to the Secretary. The Tax Review Board shall review a new rule or a change to a rule before it is filed in the North Carolina Administrative Code.

(b) The Secretary must ask the Office of State Budget and Management to prepare a fiscal note for a proposed new rule or a proposed change to a rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The Secretary shall not take final action on a proposed rule change that has a substantial economic impact until at least 60 days after the fiscal note has been prepared."

(q) G.S.143-214.7(c) reads as rewritten:

~~"(c) The Commission shall hold public hearings in accordance with Article 2 of Chapter 150B. Prior to implementation of the rules, the Administrative Rules Review Commission shall review the rule pursuant to G.S. 143B-30.2 to determine whether the rule:~~

- ~~(1) Is within the authority delegated to the agency by the General Assembly;~~
- ~~(2) Is clear and unambiguous;~~
- ~~(3) Is reasonably necessary to enable the administrative agency to perform a function assigned to it by statute or to enable or facilitate the implementation of a program or policy in aid of which the rule was adopted.~~

Chapter 150B of the General Statutes governs adoption of rules by the Commission."

(r) [Building Code Council] G.S. 143-138(a) reads as rewritten:

"(a) Preparation and Adoption. -- The Building Code Council is hereby empowered to prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. Prior to the adoption of this Code, or any part thereof, the Council shall hold at least one public hearing. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in Raleigh, said notice to be published the first time not less than 15 days prior to the date fixed for said hearing. The Council may hold such other public hearings and give such other notice as it may deem necessary.

The Council shall request the Office of State Budget and Management to prepare a fiscal note for a proposed Code change that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The Council shall not take final action on a proposed Code change that has a substantial economic impact until at least 60 days after the fiscal note has been prepared."

(s) G.S. 143-215(c), 143-215(d), 143-215.107(f), and 143-215.107(g) are repealed.

(t) Notwithstanding G.S. 120-70.100(b), as enacted by subsection (a) of this section, the terms of initial members of the Joint Legislative Administrative Procedure Oversight Committee shall begin upon appointment and shall end on January 15, 1997.

(u) G.S. 148-11 reads as rewritten:

"§ 148-11. Authority to adopt rules.

The Secretary shall adopt rules for the government of the State prison system. ~~Chapter 150B of the General Statutes governs the adoption of rules~~

by the Secretary. The Secretary shall have the rules that pertain to enforcing discipline read to every prisoner when received in the State prison system and a printed copy of these rules made available to the prisoners."

(v) G.S. 150B-21(b)(5), as enacted by Section 1 of Chapter 415 of the 1995 Session Laws, reads as rewritten:

"(5) Providing the North Carolina Association of County Commissioners and the North Carolina League of Municipalities with copies of all fiscal notes required by G.S. 150B-21.4(b), prior to ~~the publication of proposed rules~~ in the North Carolina Register, Register of the proposed text of a permanent rule change."

(w) G.S. 150B-21.26, as enacted by Section 3 of Chapter 415 of the 1995 Session Laws, reads as rewritten:

"§ 150B-21.26. Governor to conduct preliminary review of certain administrative rules.

(a) Preliminary Review. -- ~~Before~~ At least 30 days before an agency adopts a publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, and at least 30 days prior to publishing notice of its intent to adopt such permanent rule in the North Carolina Register as required by G.S. 150B-21.2, an agency shall the agency must submit the rule all of the following to the Governor for preliminary review, review:

(b) Submission. -- To facilitate the Governor's preliminary review of a permanent rule as required by subsection (a) of this section, the agency shall submit to the Governor the following:

- (1) ~~Either the~~ The text of the proposed rule or a statement of the subject matter of the proposed rule, change.
- (2) A short explanation of the reason for the proposed action, change.
- (3) A fiscal note stating the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and explaining how the amount was computed.

(c) (b) Scope. -- The Governor's preliminary review of a proposed permanent rule change that would affect the expenditures or revenues of a unit of local government shall include consideration of the following:

- (1) The agency's explanation of the reason for the proposed action, change.
- (2) Any unanticipated effects of the proposed action change on local government budgets.
- (3) The potential costs of the proposed action change weighed against the potential risks to the public of not taking the proposed action, change."

(x) G.S. 150B-21.27, as enacted by Section 3 of Chapter 415 of the 1995 Session Laws, reads as rewritten:

"§ 150B-21.27. Minimizing the effects of rules on local budgets.

(a) In adopting permanent rules that would increase or decrease the expenditure expenditures or revenues of a unit of local government, the agency shall consider the timing for implementation of the proposed rule as part of the preparation of the fiscal note required by G.S. 150B-21.4(b). (b)

~~In cases where~~ If the computation of costs in a fiscal note indicates that the proposed rule ~~action change~~ will disrupt the budget process as set out in the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes, the agency shall ~~establish~~ specify the effective date of the ~~rule or action change~~ as the later of July 1 of the fiscal year following publication of the rule in the North Carolina Register or six months following publication. (c) ~~If conditions beyond the control of an agency compel an agency to adopt rules with other than the July 1 effective date, the agency shall include a statement with the fiscal note explaining the basis for the effective date, the date the change would otherwise become effective under G.S. 150B-21.3."~~

(y) Section 5 of Chapter 415 of the 1995 Session Laws is repealed.

(z) This section becomes effective December 1, 1995, and applies to all rules for which a notice of rule making is published in the North Carolina Register on or after that date and to rule and Building Code changes that are initiated on or after that date and that are not subject to the rule-making procedures set out in Article 2A of Chapter 150B of the General Statutes.

Requested by: Representatives Justus, Thompson, Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **WESTERN JUSTICE ACADEMY**

**Sec. 27.9.** Of the funds appropriated to the Department of Justice in this act for the 1995-97 biennium, the sum of one million four hundred seventy thousand dollars (\$1,470,000) shall be used for design and planning and the purchase of real property for the Western Justice Academy at a site to be located at Edneyville in Henderson County.

Requested by: Representatives Justus, Thompson, Kiser, Senators Ballance, Rand

#### **CONSOLIDATION OF PRISON FACILITIES/PRISON CONSTRUCTION**

**Sec. 27.10.** (a) In order to continue the recommendations of the Government Performance Audit Committee pertaining to the consolidation of smaller prison units in Western North Carolina into a lesser number of facilities, the Department of Correction shall develop and implement plans to close Avery Correctional Center, Watauga Correctional Center, and Yancey Correctional Center and replace them with a facility to be constructed at a site in Avery and Mitchell Counties.

(b) The Office of State Construction of the Department of Administration may contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of prison facilities in order to implement the providing of prison facilities under the provisions of this act.

The facilities authorized under this act shall be constructed in accordance with the provisions of general law applicable to the construction of State facilities. If the Secretary of Administration, after consultation with the Secretary of Correction, finds that the delivery of prison facilities must be expedited for good cause, the Office of State Construction of the Department of Administration shall be exempt from the following statutes



and rules implementing those statutes, to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Prior to exercising the exemptions allowable under this section, the Secretary of Administration shall give reasonable notice in writing of the Department's intent to exercise the exemptions to the Speaker of the House, the President Pro Tempore of the Senate, the Chairs of the House and Senate Appropriations Committees, the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety, the Chairs of the Joint Legislative Corrections Oversight Committee, and the Fiscal Research Division. The written notice shall contain at least the following information: (i) the specific statutory requirement or requirements from which the Department intends to exempt itself; (ii) the reason the exemption is necessary to expedite delivery of prison facilities; (iii) the way in which the Department anticipates the exemption will expedite the delivery of prison facilities; and (iv) a brief summary of the proposed contract for the project which is to be exempted.

The Office of State Construction of the Department of Administration shall have a verifiable ten percent (10%) goal for participation by minority and women-owned businesses. All contracts for the design, construction, or demolition of prison facilities shall include a penalty for failure to complete the work by a specified date.

The Office of State Construction of the Department of Administration shall involve the Department of Correction in all aspects of the projects to the extent that such involvement relates to the Department's program needs and to its responsibility for the care of the prison population.

(c) The Office of State Construction of the Department of Administration shall provide quarterly reports to the Chairs of the Appropriations Committee and the Base Budget Committee in the Senate, the Chairs of the Appropriations Committee in the House, the Joint Legislative Commission on Governmental Operations, the Chairs of the Joint Legislative Corrections Oversight Committee, and the Fiscal Research Division as to any changes in projects and allocations made under this act. The report shall include any changes in the projects and allocations made pursuant to this act, information on which contractors have been selected, what contracts have been entered into, the projected and actual occupancy dates of facilities contracted for, the number of beds to be constructed on each project, the location of each project, and the projected and actual cost of each project.

The Department of Insurance and the Department of Correction shall report quarterly to the Joint Legislative Commission on Governmental Operations on their involvement in the prison construction program.

Requested by: Senators Ballance, Rand. Representatives Justus, Thompson, Kiser

#### **MATCHING FUNDS FOR FEDERAL PRISON CONSTRUCTION FUNDS**

**Sec. 27.10A.** Appropriations made in this act to the Office of State Construction of the Department of Administration for construction of new prison beds, excluding the sum of seven million five hundred thousand



dollars (\$7,500,000) to be used for the design and preliminary site work, are to match federal funds available for prison construction in the 1995 or 1996 federal fiscal year or subsequent federal fiscal years. If the federal match is not made available by January 1, 1996, these State funds shall be made available to the Office of State Construction of the Department of Administration for construction of new prison beds, segregation units, and support buildings and systems as specified in this act.

The Office of State Construction shall report to the Chairs of the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections Oversight Committee, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the availability of federal prison construction matching funds.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **UNNEEDED PRISON MATCH FUNDS**

**Sec. 27.10A1.** To the extent that the Director of the Budget determines that State funds appropriated in this act for construction of new prison beds are not needed to match federal funds for the 1995-97 fiscal biennium, the Director of the Budget may transfer the following amounts from these funds for the following purposes only:

- (1) Up to \$15,000,000 to the Department of Human Resources for compliance with court orders in the Willie M. and Thomas S. lawsuits;
- (2) Up to \$2,000,000 to the Department of Human Resources as a State match for federal funds for the implementation of the Electronic Benefits Program for food stamps only;
- (3) Up to \$6,000,000 to the Department of Environment, health, and Natural Resources for water and sewer demonstration projects.
- (4) Up to \$3,277,000 to the Department of Transportation as a State match for federal funds for the North Carolina Global TransPark Education and Training Center;
- (5) Up to \$1,000,000 to the Department of Commerce for the Economic Development Information System;
- (6) Up to \$3,000,000 to the Department of Commerce for the Industrial Recruitment Competitive Fund;
- (7) Up to \$6,000,000 to the Department of Justice for the construction of the SBI Operations Building;
- (8) Funds for a portion of the nonfederal match for the beach renourishment projects at Kure Beach and Long Beach;
- (9) Up to \$5,000,000 to the Department of Human Resources as a State match for federal funds for the implementation of the North Carolina Access Network (NC CAN) program; and
- (10) Any remaining funds, up to \$50,000,000 for the Reserve for Education Purposes in the Office of State Budget and Management.

The Director of the Budget shall give priority to these purposes in the order in which they appear in this section.

The Office of State Budget and Management shall report the receipt of federal matching funds for new State prison construction for the 1995-96 fiscal year to the Joint Legislative Commission on Governmental Operations and shall report its proposed transfers, if any, in accordance with the priorities required by this section.

Requested by: Senator Ballance

# **REVERSION OF CERTAIN INSURANCE SETTLEMENT PROCEEDS**

**Sec. 27.10B.** Section 22(b) of Chapter 324 of the 1995 Session Laws reads as rewritten:

"(b) Any funds received by the Department of Justice in settlement of insurance claims arising from damage to the Blue Bell building at the North Carolina Justice Academy shall be expended by the Department for replacement of the building and for no other purpose. ~~If any appropriation is made to the Department for replacement of the Blue Bell Building, then~~ any Any funds received by the Department in excess of one million one hundred thousand dollars (\$1,100,000) as insurance settlement proceeds shall revert to the General Fund."

Requested by: Representatives Holmes, Creech, Esposito, Gardner, Hayes, Nye, Senators Plyler, Perdue, Odom, Martin of Guilford, Forrester

# **REALLOCATION AND RENOVATION OF FACILITY FOR A JUVENILE DETENTION CENTER**

**Sec. 27.11C.** The Richmond Correctional Center is reallocated from the Department of Correction to the Department of Human Resources. Funds in the Reserve for Repairs and Renovations for the 1995-96 fiscal year may be allocated to the Department of Human Resources to repair and renovate the facility to serve as a detention center for juveniles bound over to Superior Court and awaiting trial as adults.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt

# **WATER RESOURCES DEVELOPMENT PROJECTS FUNDS**

**Sec. 27.12.** (a) Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources for the 1995-96 fiscal year, the sum of one million eight hundred sixty-five thousand dollars (\$1,865,000) shall be used for water resources development projects and the sum of two hundred thousand dollars (\$200,000) shall be used for small watershed projects. The Department shall allocate funds for the following projects whose estimated costs are as indicated:

- |     |  |           |
|-----|--|-----------|
| (1) | Wilmington Harbor<br>Deepening Study                           | \$374,000 |
| (2) | Jordan Lake Water Supply<br>Repayment                          | 130,000   |
| (3) | Wilmington Harbor<br>38-ft. Navigation<br>Maintenance Dredging | 500,000   |

(4)	Aquatic Plant Control (Statewide) includes Lake Gaston	150,000
(5)	Rollinson Channel Maintenance, Dare County	160,000
(6)	Wilmington Harbor Channel Widening	72,000
(7)	State-Local Projects	199,000
(8)	Repayment to New Hanover County Spoil Disposal Area	130,000
(9)	Dare County Beaches Feasibility Study	100,000
(10)	Planning Assistance to Communities	50,000
(11)	Limestone Creek Watershed Project Duplin County	40,000
(12)	Deep Creek Watershed Project Yadkin County	160,000
Total		\$2,065,000

(b) Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects listed in subsection (a) of this section are delayed and the budgeted State funds cannot be used during the 1995-96 fiscal year, or if the projects listed in subsection (a) of this section are accomplished at a lower cost, the Department may use the resulting fund availability to fund any of the following:

- (1) Corps of Engineers project feasibility studies.
- (2) Corps of Engineers projects whose schedules have advanced and require State matching funds in fiscal year 1995-96.
- (3) State-local Water Resources Development Projects.
- (4) Soil Conservation Projects whose schedules have advanced and require State matching funds in fiscal year 1995-96.

Funds not expended or encumbered for these purposes shall revert to the General Fund at the end of the 1996-97 fiscal year.

(c) The Department shall make quarterly reports on the use of these funds to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Office of State Budget and Management. Each report shall include all of the following:

- (1) All projects listed in this section.

- (2) The estimated cost of each project.
- (3) The date that work on each project began or is expected to begin.
- (4) The date that work on each project was completed or is expected to be completed.
- (5) The actual cost of each project.

The quarterly reports shall also show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

Requested by: Senators Martin of Pitt, Plyler, Perdue, Odom, Representatives Holmes, Creech, Esposito

#### **STATE PARKS CAPITAL**

**Sec. 27.13.** Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources for the 1995-96 fiscal year for capital improvements and land acquisition in the State Parks System, no more than three percent (3%) may be used by the Department for operating expenses associated with managing capital improvements projects and acquiring land.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Creech, Esposito

#### **REPAIRS AND RENOVATIONS OF STATE PARK FACILITIES**

**Sec. 27.13A.** Funds in the amount of ten million dollars (\$10,000,000) appropriated in this act for the State Parks System may be used for repairs and renovations of State park facilities. Funds allocated in Section 5.3 of Chapter 324 of the 1995 Session Laws to the Office of State Budget and Management for the Repairs and Renovations Fund shall not be used for such purposes.

Requested by: Senator Martin of Pitt

#### **REPAIRS AND RENOVATIONS FUNDS FOR REPAIR OF UNSAFE BUILDINGS**

**Sec. 27.14.** Notwithstanding any other provision of law, funds in the Reserve for Repairs and Renovations for the 1995-96 fiscal year may be allocated to the Department of Agriculture to repair any structure that the Department of Insurance declares is in violation of the State Building Code and is unsafe to the extent that occupancy may be denied.

Requested by: Senator Sherron

#### **UNC SELF-LIQUIDATING PROJECTS AUTHORIZED**

**Sec. 27.15.** (a) The purpose of this section is to authorize the construction by certain constituent institutions of The University of North Carolina and the University of North Carolina Hospitals at Chapel Hill, of the capital improvements projects listed in the act for the respective institutions, and authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, including patient receipts at the University of North Carolina Hospitals at Chapel Hill, self-liquidating indebtedness, or other funds, or any combination of these funds, but not including funds appropriated from the General Fund of the State.

(b) The capital improvements projects authorized by this section to be constructed and financed as provided in subsection (a) of this section are as follows:

1.	Appalachian State University Improvements to Student Residence Facilities	\$ 3,697,600
2.	East Carolina University Dowdy-Ficklen Stadium Expansion Renovations and Addition to the Student Health Center Removal of Architectural Barriers	\$11,183,800 \$ 3,048,800 \$13,805,300
3.	North Carolina A & T State University Student Union Renovation and Addition	\$ 4,395,000
4.	North Carolina Central University Renovation of Track and Football Stadium	\$ 2,835,000
5.	North Carolina State University Partners' II Building Partners' III Building (Engineering Corporate Building) Student Health Services Center	\$ 8,077,500 \$10,311,700 \$ 7,104,500
6.	The University of North Carolina at Asheville 180-Bed Residence Hall	\$ 3,750,600
7.	The University of North Carolina at Chapel Hill Addition to the Biological Sciences Research Center Building Residence Hall Video Network and Communications Wiring Printing Services Center	\$ 9,374,000 \$ 4,000,500 \$ 2,083,100
8.	The University of North Carolina at Charlotte 1000 Space Parking Deck Cameron Applied Research Center	\$ 7,525,200 \$ 4,876,100
9.	The University of North Carolina at Greensboro Baseball Stadium	\$ 3,759,100
10.	The University of North Carolina at Wilmington 200 Student Residence Hall Campus Recreation Facility	\$ 5,942,700 \$10,484,500
11.	Western Carolina University Renovation of Hinds University Center	\$ 4,250,000
12.	The University of North Carolina Hospitals at Chapel Hill North Carolina Children's Hospital, North Carolina Women's Hospital and Support Services - Phase II	\$59,970,800.

(c) At the request of The University of North Carolina Board of Governors and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the scope of or a change in the method of funding the project authorized by this section. In making a determination of whether to authorize a change in scope or funding, the Director of the Budget may consult with the Advisory



Budget Commission. In no event may appropriations from the General Fund be used for a project authorized by this section.

**Sec. 27.16.** (a) The purpose of this section is to amend Section 2 of the 1993 Session Laws, Chapter 451, as it relates to the University of North Carolina at Greensboro by increasing the amount authorized for the McIver Street Parking Deck from five million seven hundred eight thousand six hundred dollars (\$5,708,600) to eight million forty-one thousand four hundred dollars (\$8,041,400).

(b) Section 2 of Chapter 451 of the 1993 Session Laws under the institutional subheading "6. The University of North Carolina at Greensboro" as indicated, and affecting only the project listed in this act is amended to read as follows:

"c. McIver Street Parking Deck

\$8,041,400".

## **PART 28. GENERAL CAPITAL AND MISCELLANEOUS BUDGET PROVISIONS**

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

### **PROCEDURES FOR DISBURSEMENT**

**Sec. 28.** The appropriations made by the 1995 General Assembly for capital improvements shall be disbursed for the purposes provided by this act. Expenditure of funds shall not be made by any State department, institution, or agency, until an allotment has been approved by the Governor as Director of the Budget. The allotment shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes. Prior to the award of construction contracts for projects to be financed in whole or in part with self-liquidating appropriations, the Director of the Budget shall approve the elements of the method of financing of those projects including the source of funds, interest rate, and liquidation period. Provided, however, that if the Director of the Budget approves the method of financing a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Where direct capital improvement appropriations include the purpose of furnishing fixed and movable equipment for any project, those funds for equipment shall not be subject to transfer into construction accounts except as authorized by the Director of the Budget. The expenditure of funds for fixed and movable equipment and furnishings shall be reviewed and approved by the Director of the Budget prior to commitment of funds.

Capital improvement projects authorized by the 1995 General Assembly shall be completed, including fixed and movable equipment and furnishings, within the limits of the amounts of the direct or self-liquidating appropriations provided, except as otherwise provided in this act.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

### **RESERVE FOR ADVANCE PLANNING**

**Sec. 28.1.** The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on how it intends to spend funds from the Reserve for Advance Planning at least 45 days before it spends the funds.

The Office of State Budget and Management shall also report the results of any project on which it uses funds from the Reserve for Advance Planning to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **ENCUMBERED APPROPRIATIONS AND PROJECT RESERVE FUND**

**Sec. 28.2.** When each capital improvement project appropriated by the 1995 General Assembly, other than those projects under the Board of Governors of The University of North Carolina, is placed under a construction contract, direct appropriations shall be encumbered to include all costs for construction, design, investigation, administration, movable equipment, and a reasonable contingency. Unencumbered direct appropriations remaining in the project budget shall be placed in a project reserve fund credited to the Office of State Budget and Management. Funds in the project reserve may be used for emergency repair and renovation projects at State facilities with the approval of the Director of the Budget. The project reserve fund may be used, at the discretion of the Director of the Budget, to allow for award of contracts where bids exceed appropriated funds, if those projects supplemented were designed within the scope intended by the applicable appropriation or any authorized change in it, and if, in the opinion of the Director of the Budget, all means to award contracts within the appropriation were reasonably attempted. At the discretion of the Director of the Budget, any balances in the project reserve fund shall revert to the original source.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **PROJECT COST INCREASE**

**Sec. 28.3.** Upon the request of the administration of a State agency, department, or institution, the Director of the Budget may, when in the Director's opinion it is in the best interest of the State to do so, increase the cost of a capital improvement project. Provided, however, that if the Director of the Budget increases the cost of a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting. The increase may be funded from gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at University of North Carolina Hospitals at Chapel Hill, or direct capital improvement appropriations to that department or institution.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **NEW PROJECT AUTHORIZATION**

**Sec. 28.4.** Upon the request of the administration of any State agency, department, or institution, the Governor may authorize the construction of a capital improvement project not specifically authorized by the General Assembly if such project is to be funded by gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at University of North Carolina Hospitals at Chapel Hill, or self-liquidating indebtedness. Provided, however, that if the Director of the Budget authorizes the construction of such a capital improvement project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **ADVANCE PLANNING OF CAPITAL IMPROVEMENT PROJECTS**

**Sec. 28.5.** Funds that become available by gifts, excess patient receipts above those budgeted at University of North Carolina Hospitals at Chapel Hill, federal or private grants, receipts becoming a part of special funds by act of the General Assembly or any other funds available to a State department or institution may be utilized for advance planning through the working drawing phase of capital improvement projects, upon approval of the Director of the Budget. The Director of the Budget may make allocations from the Advance Planning Fund for advance planning through the working drawing phase of capital improvement projects, except that this revolving fund shall not be utilized by the Board of Governors of The University of North Carolina or the State Board of Community Colleges.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **APPROPRIATIONS LIMITS/REVERSION OR LAPSE**

**Sec. 28.6.** Except as permitted in previous sections of this act, the appropriations for capital improvements made by the 1995 General Assembly may be expended only for specific projects set out by the 1995 General Assembly and for no other purpose. Construction of all capital improvement projects enumerated by the 1995 General Assembly shall be commenced, or self-liquidating indebtedness with respect to them shall be incurred, within 12 months following the first day of the fiscal year in which the funds are available. If construction contracts on those projects have not been awarded or self-liquidating indebtedness has not been incurred within that period, the direct appropriation for those projects shall revert to the original source, and the self-liquidating appropriation shall lapse; except that direct appropriations may be placed in a reserve fund as authorized in this act. This deadline with respect to both direct and self-liquidating appropriations may be extended with the approval of the Director of the Budget up to an additional 12 months if circumstances and conditions warrant such extension.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **EXECUTIVE BUDGET ACT APPLIES**

**Sec. 28.7.** The provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **COMMITTEE REPORT**

**Sec. 28.8.** (a) The House and Senate Conference Report on Expansion Budget/Capital Budget, dated July 28, 1995, which was distributed in the Senate and House of Representatives and used to explain this act, shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in G.S. 143-15 of the Executive Budget Act, and for these purposes shall be considered a part of this act.

(b) The budget enacted by the General Assembly for the maintenance of the various departments, institutions, and other spending agencies of the State for the 1995-97 fiscal biennium is a line item budget, in accordance with the Budget Code Structure and the State Accounting System Uniform Chart of Accounts set out in the Administrative Policies and Procedures Manual of the Office of the State Controller. This budget includes the appropriations made from all sources including the General Fund, Highway Fund, special funds, cash balances, federal receipts, and departmental receipts.

The General Assembly amended the itemized budget requests submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission, in accordance with the steps that follow, and the line item detail in the budget enacted by the General Assembly may be derived accordingly:

- (1) Negative reserves set out in the submitted budget were deleted and the totals were increased accordingly.
- (2) The base budget was adjusted in accordance with the base budget cuts and additions that were set out in the Senate and House Conference Report on the Continuation Budget, dated June 21, 1995.
- (3) Transfers of funds supporting programs were made in accordance with the House and Senate Conference Report on the Continuation Budget, dated June 21, 1995.
- (4) The expansion budget items were added in accordance with the House and Senate Conference Report on Expansion Budget/Capital Budget, dated July 28, 1995. Some of those expansion budget items were in the budget submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission.

Expansion budget items that were funded from new receipts are included in the budget enacted by the General Assembly with program-level detail.

The budget enacted by the General Assembly shall also be interpreted in accordance with the special provisions in this act and in accordance with other appropriate legislation.

In the event that there is a conflict between the line item budget certified by the Director of the Budget and the budget enacted by the General Assembly, the budget enacted by the General Assembly shall prevail.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **MOST TEXT APPLIES ONLY TO 1995-97**

**Sec. 28.9.** Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 fiscal biennium.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **1995-97 APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY**

**Sec. 28.10.** Except as amended by this act, the provisions of Chapter 284 of the 1995 Session Laws remain in effect.

(b) Notwithstanding any modifications by this act in the amounts appropriated, except where expressly repealed or amended, the limitations and directions for the 1995-97 fiscal biennium in Chapter 324 of the 1995 Session Laws, that applied to appropriations to particular agencies or for particular purposes apply to the newly enacted appropriations and budget reductions of this act for those same particular purposes.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **EFFECT OF HEADINGS**

**Sec. 28.11.** The headings to the titles, parts, and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **SEVERABILITY CLAUSE**

**Sec. 28.12.** If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

#### **EFFECTIVE DATE**

**Sec. 28.13.** Except as otherwise provided, this act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 28th day of July, 1995.



## H.B. 835

## CHAPTER 508

AN ACT TO AMEND THE GENERAL STATUTES RELATING TO  
CIVIL ACTIONS BROUGHT TO RECOVER FROM THIRD PARTIES  
STATE FUNDS EXPENDED ON MEDICAL CARE.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 130A-13 is amended by adding the following new subsection to read:

"(d) Notwithstanding any other law to the contrary, in all actions brought by the State pursuant to subsection (a) of this section to obtain reimbursement for payments for medical services, liability shall be determined on the basis of the same laws and standards, including bases for liability and applicable defenses, as would be applicable if the action were brought by the individual on whose behalf the medical services were rendered."

**Sec. 2.** G.S. 108A-59 is amended by adding the following new subsection to read:

"(c) Notwithstanding any other law to the contrary, in all actions brought pursuant to subsection (a) of this section to obtain reimbursement for payments for medical services, liability shall be determined on the basis of the same laws and standards, including bases for liability and applicable defenses, as would be applicable if the action were brought by the individual on whose behalf the medical services were rendered."

**Sec. 3.** This act is effective October 1, 1995, and applies to actions pending or commencing on and after that date.

In the General Assembly read three times and ratified this the 28th day of July, 1995.

## S.B. 590

## CHAPTER 509

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING  
CHANGES TO THE GENERAL STATUTES AND SESSION LAWS AS  
RECOMMENDED BY THE GENERAL STATUTES COMMISSION  
AND TO MAKE OTHER CORRECTIONS AND TECHNICAL AND  
CONFORMING CHANGES TO THE GENERAL STATUTES AND  
SESSION LAWS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 1C-1807 reads as rewritten:

"§ 1C-1807. Situations not covered by Article.

This Article does not prevent the recognition of foreign judgment judgments in situations not covered by this Article."

**Sec. 2.** Effective October 1, 1995, G.S. 7A-29(a) reads as rewritten:

"(a) From any final order or decision of the North Carolina Utilities Commission not governed by subsection (b) of this section, the Department of Human Resources pursuant to G.S. 131E-188(b), the Commissioner of

Banks pursuant to Articles ~~17 and 18~~ 17A, 17, 18, and 18A of Chapter 53 of the General Statutes, the Administrator of Savings and Loans pursuant to Article 3A of Chapter 54B of the General Statutes, the North Carolina Industrial Commission, the North Carolina State Bar pursuant to G.S. 84-28, the Property Tax Commission pursuant to G.S. 105-290 and G.S. 105-342, the Board of State Contract Appeals pursuant to G.S. 143-135.9, the Commissioner of Insurance pursuant to G.S. 58-2-80, or the Secretary of Environment, Health, and Natural Resources under G.S. 104E-6.2, appeal as of right lies directly to the Court of Appeals."

**Sec. 3.** G.S. 7A-41(c)(3) reads as rewritten:

- "(3) The change is approved by ~~the~~ the county board of elections where the precinct is located, State Board of Elections and by the Secretary of State upon finding that the change:
- Will improve election administration; and
  - Complies with subdivisions (1) and (2) of this subsection."

**Sec. 4.** G.S. 7A-343.1 reads as rewritten:

"§ 7A-343.1. *Distribution of copies of the appellate division reports.*

The Administrative Officer of the Courts shall, at the State's expense distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:

Governor, Office of the	1
Lieutenant Governor, Office of the	1
Secretary of State, Department of the	2
State Auditor, Department of the	1
Treasurer, Department of the State	1
Superintendent of Public Instruction	1
Office of the Attorney General	11
State Bureau of Investigation	1
Agriculture, Department of	1
Labor, Department of	1
Insurance, Department of	1
Budget Bureau, Department of Administration	1
Property Control, Department of Administration	1
State Planning, Department of Administration	1
Board of Environment, Health, and Natural Resources	1
Revenue, Department of	1
Board of Human Resources	1
Commission for the Blind	1
Board of Transportation	1
Motor Vehicles, Division of	1
Utilities Commission	8
Industrial Commission	11
Office of Administrative Hearings	2
Community Colleges, Department of	38
Employment Security Commission	1
Commission of Correction	1
Parole Commission	1
Archives and History, Division of	1

Crime Control and Public Safety, Department of	2
Department of Cultural Resources	3
Legislative Building Library	2
Justices of the Supreme Court	1 ea.
Judges of the Court of Appeals	1 ea.
Judges of the Superior Court	1 ea.
Clerks of the Superior Court	1 ea.
District Attorneys	1 ea.
Emergency and Special Judges of the Superior Court	1 ea.
Supreme Court Library	AS MANY AS REQUESTED
Appellate Division Reporter	1
University of North Carolina, Chapel Hill	71
University of North Carolina, Charlotte	1
University of North Carolina, Greensboro	1
University of North Carolina, Asheville	1
North Carolina State University, Raleigh	1
Appalachian State University	1
East Carolina University	1
Fayetteville State University	1
North Carolina Central University	17
Western Carolina University	1
Duke University	17
Davidson College	2
Wake Forest University	25
Lenoir Rhyne College	1
Elon College	1
Campbell College University	25
Federal, Out-of-State and Foreign Secretary of State	1
Secretary of Defense	1
Secretary of Health, Education and Welfare	1
Secretary of Housing and Urban Development	1
Secretary of Transportation	1
Attorney General	1
Department of Justice	1
Internal Revenue Service	1
Veterans' Administration	1
Library of Congress	5
Federal Judges resident in North Carolina	1 ea.
Marshal of the United States Supreme Court	1
Federal District Attorneys resident in North Carolina	1 ea.
Federal Clerks of Court resident in North Carolina	1 ea.
Supreme Court Library exchange list	1

Each justice of the Supreme Court and judge of the Court of Appeals shall receive for his private use, one complete and up-to-date set of the appellate division reports. The copies of reports furnished each justice or judge as set out in the table above may be retained by him personally to enable him to keep up-to-date his personal set of reports."

Sec. 5. G.S. 7A-675(a) reads as rewritten:

"(a) The clerk of superior court shall maintain a complete record of all juvenile cases filed in the clerk's office to be known as the juvenile record, which shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the judge. The record shall include the summons, petition, custody order, court order, written motions, the electronic or mechanical recording of the hearing, and other papers filed in the proceeding. The recording of the hearing shall be reduced to a written transcript only when notice of appeal has been timely given. After the time for appeal has expired with no appeal having been filed, the recording of the hearing may be erased or destroyed upon the written order of the judge.

The following persons may examine the juvenile's record without an order of the judge:

- (1) The juvenile, the juvenile's parent, guardian, or custodian, or another authorized representative of the juvenile.
- (2) The prosecutor in a subsequent criminal proceeding against the juvenile.

The juvenile's record of an adjudication of delinquency for an offense that would be a Class A, ~~B~~, B1, B2, C, D, or E felony if committed by an adult may be used in a subsequent criminal proceeding against the juvenile either under G.S. 8C-1, Rule 404(b), or to prove an aggravating factor at sentencing under G.S. 15A-1340.4(a), G.S. 15A-1340.16(d), or G.S. 15A-2000(e). The record may be so used only by order of the judge in the subsequent criminal proceeding, upon motion of the prosecutor, after an in camera hearing to determine whether the record in question is admissible."

**Sec. 6.** G.S. 7A-676(b) reads as rewritten:

"(b) Any person who has attained the age of 16 years may file a petition in the court where the person was adjudicated delinquent for expunction of all records of that adjudication provided:

- (1) The offense for which the person was adjudicated would have been a crime other than a Class A, ~~B~~, B1, B2, C, D, or E felony if committed by an adult.
- (2) The person has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

Records relating to an adjudication for an offense that would be a Class A, ~~B~~, B1, B2, C, D, or E felony if committed by an adult shall not be expunged."

**Sec. 7.** G.S. 8C-1, Rule 404(b) reads as rewritten:

"(b) Other crimes, wrongs, or acts. -- Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident. Admissible evidence may include evidence of an offense committed by a juvenile if it would have been a Class A, ~~B~~, B1, B2, C, D, or E felony if committed by an adult."

**Sec. 8.** G.S. 14-39(a) reads as rewritten:

"(a) Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, or any other person under the age of 16 years without the consent of a parent or legal custodian of such person, shall be guilty of kidnapping if such confinement, restraint or removal is for the purpose of:

- (1) Holding such other person for ransom or as a hostage or using such other person as a shield; or
- (2) Facilitating the commission of any felony or facilitating flight of any person following the commission of a felony; or
- (3) Doing serious bodily harm to or terrorizing the person so confined, restrained or removed or any other ~~person, person; or~~
- (4) Holding such other person in involuntary servitude in violation of G.S. 14-43.2."

**Sec. 9.** G.S. 14-72.1(e) reads as rewritten:

"(e) Punishment. -- For a first conviction under ~~subsections~~ subsection (a) or (d), or for a subsequent conviction for which the punishment is not specified by this subsection, the defendant may be guilty of a Class 3 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant perform community service for a term of at least 24 hours. For a second offense committed within three years after the date the defendant was convicted of an offense under this section, the defendant may be guilty of a Class 2 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant be imprisoned for a term of at least 72 hours as a condition of special probation, perform community service for a term of at least 72 hours, or both. For a third or subsequent offense committed within five years after the date the defendant was convicted of two other offenses under this section, the defendant may be guilty of a Class 1 misdemeanor. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 14 days. However, if the sentencing judge finds that the defendant is unable, by reason of mental or physical infirmity, to perform the service required under this section, and the reasons for such findings are set forth in the judgment, he may pronounce such other sentence as he finds appropriate."

**Sec. 10.** G.S. 14-401.14(a) reads as rewritten:

"(a) If a person shall, because of race, color, religion, nationality, or country of origin, assault another person, or damage or deface the property of another person, or threaten to do any such act, he shall be guilty of a ~~misdemeanor punishable by imprisonment up to two years, or a fine, or both.~~ Class 1 misdemeanor."

**Sec. 11.** G.S. 14-413 reads as rewritten:

"§ 14-413. *Permits for use at public exhibitions.*

For the purpose of enforcing the provisions of this ~~article~~, Article, the board of county commissioners of any county ~~are~~ is hereby empowered and authorized to issue permits for use in connection with the conduct of public exhibitions, such as fairs, carnivals, shows of all descriptions and public exhibitions, but only after satisfactory evidence is produced to the effect that said pyrotechnics will be used for the aforementioned purposes and none



other. Provided that no such permit shall be required for a public exhibition authorized by ~~the~~ The University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel Hill."

**Sec. 12.** G.S. 14-455(a) reads as rewritten:

"(a) It is unlawful to willfully and without authorization alter, damage, or destroy a computer, computer system, computer network, or any part thereof. A violation of this subsection is a Class G felony if the damage caused by the alteration, damage, or destruction is more than one thousand dollars (\$1,000). Any other violation of this subsection is a Class 1 misdemeanor.

**Class 1"**.

**Sec. 13.** G.S. 15A-1340.16(d)(18a) reads as rewritten:

"(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, ~~B~~, B1, B2, C, D, or E felony if committed by an adult."

**Sec. 14.** G.S. 15A-2000(e)(3) reads as rewritten:

"(2) The defendant had been previously convicted of another capital felony or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a capital felony if committed by an adult.

(3) The defendant had been previously convicted of a felony involving the use or threat of violence to the person or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a Class A, ~~B~~, B1, B2, C, D, or E felony involving the use or threat of violence to the person if the offense had been committed by an adult."

**Sec. 14.1.** G.S. 17C-6(a)(8) reads as rewritten:

"(8) Investigate and make such evaluations as may be necessary to determine if criminal justice agencies, schools, and individuals are complying with the provision provisions of this Chapter;"

**Sec. 15.** G.S. 18B-1000(1) reads as rewritten:

"(1) Community theatre. -- An establishment owned and operated by a bona fide nonprofit organization that is engaged solely in the business of sponsoring or presenting ~~an~~ amateur or professional theatrical events to the public. A permit issued for a community theatre is valid only during regularly scheduled theatrical events sponsored by such nonprofit organization."

**Sec. 16.** G.S. 18B-1001(3) reads as rewritten:

"(3) On-Premises Unfortified Wine Permit. -- An on-premises unfortified wine permit authorizes the retail sale of unfortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises. The permit may be issued for any of the following:

- a. Restaurants;
- b. Hotels;
- c. Eating establishments;

- d. Private clubs;
- e. Convention centers;
- f. Cooking schools;
- g. Community ~~theatres~~ theatres;
- h. ~~Winery, Wineries.~~

Sec. 17. G.S. 18B-1001(5) reads as rewritten:

"(5) On-Premises Fortified Wine Permit. -- An on-premises fortified wine permit authorizes the retail sale of fortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of fortified wine in the manufacturer's original container for consumption off the premises. The permit may be issued for any of the following:

- a. Restaurants;
- b. Hotels;
- c. Private clubs;
- d. Community ~~theatres~~ theatres;
- e. Wineries;
- f. Convention centers."

Sec. 18. G.S. 18B-1001(7) reads as rewritten:

"(7) Brown-Bagging Permit. -- A brown-bagging permit authorizes each individual patron of an establishment, with the permission of the permittee, to bring up to eight liters of fortified wine or spirituous liquor, or eight liters of the two combined, onto the premises and to consume those alcoholic beverages on the premises. The permit may be issued for any of the following:

- a. Restaurants;
- b. Hotels;
- c. Private clubs;
- d. Community ~~theaters~~ theatres;
- e. ~~Congressionally-chartered~~ Congressionally chartered veterans organizations."

Sec. 19. G.S. 19A-1 reads as rewritten:

"§ 19A-1. Definitions.

~~For the purposes of this Chapter the following definition of terms shall be applicable:~~ The following definitions apply in this Article:

- (1) The terms 'animals' and 'dumb animals' ~~shall be held to include every useful living creature.~~
- (2) The terms 'cruelty' and 'cruel treatment' ~~shall be held to include every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted; but such term~~ these terms shall not be construed to include lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, lawful activities sponsored by agencies conducting biomedical research or training, lawful activities for sport, the production of livestock or poultry, or the lawful destruction of any animal for the purpose of protecting such livestock or poultry.
- (3) The term 'person' ~~as used herein shall be held to include~~ includes any persons, firm or corporation, including any nonprofit

corporation, such as a society for the prevention of cruelty to animals."

**Sec. 20.** G.S. 19A-2 reads as rewritten:

"§ 19A-2. *Purpose.*

It shall be the purpose of this ~~Chapter~~ Article to provide a civil remedy for the protection and humane treatment of animals in addition to any criminal remedies that are available and it shall be proper in any action to combine causes of action against one or more defendants for the protection of one or more animals. A real party in interest as plaintiff shall be held to include any 'person' as hereinbefore defined even though such person does not have a possessory or ownership right in an animal; a real party in interest as defendant shall include any person who owns or has possession of an animal."

**Sec. 21.** G.S. 25-2A-103(1)(g) reads as rewritten:

- "(g) 'Finance lease' means a lease with respect to which: (i) the lessor does not select, ~~manufacturer,~~ manufacture, or supply the goods; (ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and (iii) one of the following occurs:
- (A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
  - (B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
  - (C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or
  - (D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this Article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies."

**Sec. 22.** The catch line of G.S. 25-2A-305 reads as rewritten:

"§ 25-2A-305. *Sale or sublease of goods by ~~lessor~~, lessee.*"

**Sec. 23.** G.S. 25-2A-526(3) reads as rewritten:

"(3)(a) To stop ~~deliver~~, delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods."

(b) ~~after~~ After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) ~~a~~ A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor."

**Sec. 24.** G.S. 36A-136(20) reads as rewritten:

"(20) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the trustee deems advisable, including the power of a corporate trustee to borrow from the trustee's own banking department, for the sole purpose of paying debts, taxes, and other claims against the trust property as may be required to secure such loan or loans, and to renew existing loans either as to ~~make~~ maker or endorser."

**Sec. 25.** G.S. 45-21.21(d) reads as rewritten:

"(d) If a sale is not held at the time fixed therefor and is not postponed as provided by this section, or if a postponed sale is not held at the time fixed therefor or within 90 days of the date originally fixed for the sale, then prior to such sale taking place the provisions of G.S. 45-21.16 need not be complied with but the provisions of G.S. 45-21.16A, 45-21.17, and 45-21.17A shall be again complied with, or if on appeal, the appellate court orders the sale to be held, as to such sale so authorized the provisions of G.S. 45-21.16 need not be complied with again but those of G.S. 45-21.16A, 45-21.17, and 45-21.17A shall be."

**Sec. 26.** G.S. 45-21.33(c)(3) reads as rewritten:

"(3) Proof as required by the clerk, which may be by affidavit, that notices of hearing, sale and resale were served upon all parties entitled thereto under G.S. 45-21.16, G.S. 45-21.17, 45-21.17A, and 45-21.30. In the absence of an affidavit to the contrary filed with the clerk, an affidavit by the person holding the sale that the notice of sale was posted in the area designated by the clerk of superior court for posting public notices in the county or counties in which the property is situated 20 days prior to the sale shall be proof of compliance with the requirements of G.S. 45-21.17(1)a."

**Sec. 27.** G.S. 55A-7-27(b)(3) reads as rewritten:

"(3) Two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders: and or."

**Sec. 28.** Effective July 1, 1994, G.S. 55A-8-05(a) reads as rewritten:

"(a) The articles of incorporation or bylaws may specify the terms of directors. In the absence of a contrary provision in the articles ~~or~~ of incorporation or bylaws, the term of each director shall be one year, and directors may serve successive terms."

**Sec. 29.** Effective July 1, 1994, G.S. 55A-8-23(a) reads as rewritten:

"(a) A director may waive any notice required by this Chapter, the articles of ~~corporation~~, incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b) of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records."

**Sec. 30.** Effective July 1, 1994, G.S. 55A-10-30 reads as rewritten:

"§ 55A-10-30. *Approval by third persons.*

The articles of incorporation or bylaws may require an amendment to the articles ~~or~~ of incorporation or bylaws to be approved in writing by a specified person or persons other than the board of directors. Such a provision in the articles of incorporation or bylaws may only be amended with the approval in writing of such person or persons."

**Sec. 32.** Effective July 1, 1994, G.S. 55A-15-30(a)(6) reads as rewritten:

"(6) The Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that is it has been dissolved or disappeared as the result of a merger:"

**Sec. 33.** Effective July 1, 1994, G.S. 55A-16-05(1) reads as rewritten:

"(1) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the ~~corporation~~; corporation;"

**Sec. 34.** G.S. 62-3(23)a.1. reads as rewritten:

"1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term 'public utility' shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for ~~compensation~~. compensation:"

**Sec. 35.** G.S. 78A-2(2)d.1. reads as rewritten:

"1. The security is exempted under subdivisions (1), (2), (3), (4), ~~(5)~~ (5), (7), (9), (10), (11), (13), or (14) of G.S. 78A-16, or the transaction is exempted under G.S. 78A-17, and such exemption has not been denied or revoked under G.S. 78A-18, or".

**Sec. 36.** G.S. 88A-23 reads as rewritten:

"§ 88A-23. *Reports and immunity from suit.*

Any person who has reasonable cause to suspect misconduct or incapacity of a licensee, or who has reasonable cause to suspect that any person is in



violation of this Chapter, shall report the relevant facts to the Board. Upon the receipt of such charge, or upon its ~~on~~ own initiative, the Board may give notice of an administrative hearing or may, after diligent investigation, dismiss unfounded charges. Any person making a report pursuant to this section shall be immune from any criminal prosecution or civil liability resulting therefrom unless such person knew the report was false or acted in reckless disregard of whether the report was false."

**Sec. 36.1.** G.S. 89C-13 reads as rewritten:

"§ 89C-13. *General requirements for registration.*

(a) Engineer Applicant. -- To be eligible for admission to examination for professional engineer an applicant must be of good character and reputation. An applicant desiring to take the examination in the fundamentals of engineering only must submit three character references. An applicant desiring to take the examination in the principles and practice of engineering must submit five references, two of whom shall be professional engineers having personal knowledge of his engineering experiences.

The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for registration:

(1) As a professional engineer (shall meet one):

a. Registration by Comity or Endorsement. -- A person holding a certificate of registration to engage in the practice of engineering, on the basis of comparable qualifications, issued to him by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of Canada, who in the opinion of the Board, meets the requirements of this Chapter, based on verified evidence may, upon application, be registered without further examination.

A person holding a certificate of qualification issued by the Committee on National Engineering Certification of the National Council of Engineering Examiners, whose qualifications meet the requirements of this Chapter, may upon application, be registered without further examination.

b. E.I.T. Certificate, Experience, and Examination. -- A holder of a certificate of engineer-in-training issued by the Board, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to an eight-hour examination in the principles and practices practice of engineering. Upon passing such examination, the applicant shall be granted a certificate of registration to practice professional engineering in this State, provided he is otherwise qualified.

c. Graduation, Experience, and Examination. -- A graduate of an engineering curriculum of four years or more approved by the Board as being of satisfactory standing, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may

be competent to practice engineering, shall be admitted to an eight-hour written examination in the fundamentals of engineering, and an eight-hour written examination in the principles and ~~practices~~ practice of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice professional engineering in this State, provided he is otherwise qualified.

- d. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing or with an equivalent education and engineering experience satisfactory to the Board and with a specific record of eight years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent in the fundamentals of engineering, shall be admitted to an eight-hour written examination in the fundamentals of engineering, and an eight-hour written examination in the principles and ~~practices~~ practice of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice professional engineering in this State, provided he is otherwise qualified.
- e. Long-Established Practice. -- An individual with a specific record of 20 years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering shall be admitted to an eight-hour written examination in the principles and practice of engineering. Upon passing such examination, the applicant shall be granted a certificate of registration to practice professional engineering in this State, provided he is otherwise qualified.

At its discretion the Board may require an applicant to submit exhibits, drawings, designs, or other tangible evidence of engineering work executed by him and which he personally accomplished or supervised.

The following shall be considered as minimum evidence that the applicant is qualified for certification:

(2) As an engineer-in-training (shall meet one):

- a. Graduation and Examination. -- A graduate of an engineering curriculum or related science curriculum of four years or more, approved by the Board as being of satisfactory standing, shall be admitted to an eight-hour written examination in the fundamentals of engineering. The applicant shall be notified if the examination was passed or not passed and if passed he shall be certified as an engineer-in-training, if he is otherwise qualified.
- b. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of

satisfactory standing, or with equivalent education and engineering experience satisfactory to the Board and with a specific record of four or more years of progressive experience on engineering projects of a grade and character satisfactory to the Board, shall be admitted to an eight-hour written examination in the fundamentals of engineering. The applicant shall be notified if the examination was passed or not passed and if passed he shall be certified as an engineer-in-training if he is otherwise qualified.

(b) Land Surveyor Applicant. -- To be eligible for admission to examination for land surveyor-in-training, or registered land surveyor, an applicant must be of good character and reputation and shall submit five references with his application for registration as a land surveyor, two of which references shall be registered land surveyors having personal knowledge of his land surveying experience, or in the case of an application for certification as a land surveyor-in-training by three references, one of which shall be a registered land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of his education, technical and land surveying experience, exhibits of land surveying projects with which he has been associated, recommendations by references, and reviewing of these categories during an oral examination. The land surveyor applicant's qualifications may be reviewed at an interview if the Board deems it necessary. Educational credit for institute courses, correspondence courses, etc., shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for registration as a land surveyor or for certification as a land surveyor-in-training, respectively:

(1) As a registered land surveyor (shall meet one):

- a. Rightful possession of a B.S. degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of one year or more of progressive practical experience one year of which shall have been under a practicing registered land surveyor and satisfactorily passing such oral and written examination, taken in the presence of and required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. The applicant may elect to take the first examination (Surveying Fundamentals) immediately after obtaining the B.S. degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successful completion of the experience required by this subdivision, the applicant may take the second examination (Principles and ~~Practices~~ Practice of Land Surveying). An applicant who passes both examinations and completes the educational and experience requirements of this subdivision shall be granted registration as a land surveyor.

- b. Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory to the Board of three years of progressive practical experience, two years of which shall have been under a practicing registered land surveyor, and satisfactorily passing such written and oral examination taken in the presence of and as required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. The applicant may elect to take the first examination (Surveying Fundamentals) immediately after obtaining the associate degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successfully completing two years of progressive practical experience under a practicing registered land surveyor, the applicant may elect to take the second examination (Principles and ~~Practices~~ Practice of Land Surveying) prior to, during, or after completion of the additional experience required by this subdivision. An applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted registration as a land surveyor.
- c. Land Surveyor-in-Training Certificate, Experience, and Examination. -- A holder of a certificate of land surveyor-in-training issued by the Board, and with a specific record of an additional two years or more of progressive surveying experience, one year of which shall have been under a practicing registered land surveyor, of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, shall be admitted to two four-hour examinations. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice land surveying in this State, provided he is otherwise qualified.
- d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of seven years of progressive practical experience, six years of which shall have been under a practicing registered land surveyor, and satisfactorily passing such oral and written examination written in the presence of and required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying.
- e. Repealed by Session Laws 1985 (Regular Session, 1986), c. 977, s. 7.
- f. Registration by Comity or Endorsement. -- A person holding a certificate of registration to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States will be given comity considerations. However, he may be asked to take such examinations as the Board deems necessary to determine

his qualifications, but in any event, he shall be required to pass a written examination which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.

- g. A licensed professional engineer who can satisfactorily demonstrate to the Board that his formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the two four-hour examinations on the principles and ~~practices~~ practice of land surveying and the two four-hour examinations on the fundamentals of land surveying. Upon satisfactorily passing the examinations, the applicant will be granted a license to practice land surveying in the State of North Carolina.
- h. Professional Engineers in Land Surveying. -- Any person presently licensed to practice professional engineering under this Chapter shall upon his application be licensed to practice land surveying, providing his written application is filed with the Board within one year next after June 19, 1975.

The Board shall require an applicant to submit exhibits, drawings, plats or other tangible evidence of land surveying work executed by him under proper supervision and which he has personally accomplished or supervised.

(2) As a land surveyor-in-training (shall meet one):

- a. Rightful possession of an associate degree in surveying technology approved by the Board and satisfactorily passing a written or oral examination taken in the presence of and as required by the Board.
- b. Rightful possession of a B.S. degree in surveying or other equivalent curricula in surveying all approved by the Board and satisfactorily passing such oral and written examinations written in the presence of and required by the Board.
- c. Graduation from high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of five years of progressive, practical experience, four years of which shall have been under a practicing registered land surveyor and satisfactorily passing oral and written examinations taken in the presence of and as required by the Board.

The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by him under proper supervision and which he has personally accomplished or supervised."

**Sec. 37.** G.S. 90-15 reads as rewritten:

"§ 90-15. *License fee; salaries, fees, and expenses of Board.*

Each applicant for a license by examination shall pay to the Board of Medical Examiners of the State of North Carolina a fee which shall be prescribed by the Board in an amount not exceeding the sum of four



hundred dollars (\$400.00) plus the cost of test materials before being admitted to the examination. Whenever a license is granted without examination, as authorized in G.S. 90-13, the applicant shall pay to the Board a fee in an amount to be prescribed by the Board not in excess of two hundred fifty dollars (\$250.00). Whenever a limited license is granted as provided in G.S. 90-12, the applicant shall pay to the Board a fee not to exceed one hundred fifty dollars (\$150.00), except where a limited license to practice in a medical education and training program approved by the Board for the purpose of education or training is granted, the applicant shall pay a fee of twenty-five dollars (\$25.00). A fee of twenty-five dollars (\$25.00) shall be paid for the issuance of a duplicate license. All fees shall be paid in advance to the Board of Medical Examiners of the State of North Carolina, to be held in a fund for the use of the Board. The compensation and expenses of the members and officers of the Board and all expenses proper and necessary in the opinion of the Board to the discharge of its duties under and to enforce the laws regulating the practice of medicine or surgery shall be paid out of the fund, upon the warrant of the Board. The per diem compensation of Board members shall not exceed two hundred dollars (\$200.00) per day per member for time spent in the performance and discharge of duties as a member. Any unexpended sum or sums of money remaining in the treasury of the Board at the expiration of the terms of office of the members of the Board shall be paid over to their successors in office.

For the initial and annual registration of an assistant to a physician, the Board may require the payment of a fee not to exceed a reasonable amount."

**Sec. 38.** G.S. 90-92(e) reads as rewritten:

"(e) Other Substances. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

1. Dextropropoxyphene (~~Alpha-(plus)-4-dimethylamino-1,~~ (Alpha-(plus)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).
2. Pipradrol.
3. SPA ((-)-1-dimethylamino-1, 2-diphenylethane)."

**Sec. 39.** G.S. 90-109 reads as rewritten:

"§ 90-109. *Licensing required.*

A facility for drug treatment as defined in G.S. 122C-3(14)b. shall obtain the license required by Article 2 of Chapter 122C of the General Statutes permitting operation. Subject to rules governing the operation and licensing of these facilities set by the Commission for Mental Health, ~~Mental Retardation~~, Developmental Disabilities, and Substance Abuse Services, the Department of Human Resources shall be responsible for issuing licenses. These licensing rules shall be consistent with the licensing rules adopted under Article 2 of Chapter 122C of the General Statutes."

**Sec. 40.** G.S. 90-113.9(2) reads as rewritten:

"(2) 'Commission' means the Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes."

**Sec. 41.** G.S. 90-171.25 reads as rewritten:

"§ 90-171.25. *Custody and use of funds.*

The executive director shall deposit in financial institutions designated by the Board as official depositories all fees payable to the Board. The funds shall be deposited in the name of the Board and shall be used to pay all expenses incurred by the Board in carrying out the purposes of this Article. ~~in accordance with State law."~~

**Sec. 42.** G.S. 90-187.6(a) reads as rewritten:

"(a) 'Veterinary technicians,' 'veterinary student interns,' and 'veterinary student preceptees,' before performing any services otherwise prohibited to persons not licensed or registered under this Article, shall be approved by and registered with the Board. The Board shall be responsible for all matters pertaining to the qualifications, registration, discipline, and revocation of registration of these persons, ~~under~~ under this Article and rules issued by the Board."

**Sec. 43.** G.S. 90-187.10(8) reads as rewritten:

"(8) Any certified rabies vaccinator appointed, certified and acting ~~with~~ within the provisions of G.S. 130A-186;".

**Sec. 44.** G.S. 90-270.4(d) reads as rewritten:

"(d) Nothing in this Article shall be construed as limiting the activities, services, and use of title designating training status of a student, intern, fellow, or other trainee preparing for the practice of psychology under the supervision and responsibility of a qualified psychologist in an institution of higher education or service facility, provided that such activities and services constitute a part of his ~~course of~~ or her course of study as a matriculated graduate student in psychology. For individuals pursuing postdoctoral training or experience in psychology, nothing shall limit the use of a title designating training status, but the Board may develop rules defining qualified supervision, disclosure of supervisory relationships, frequency of supervision, settings to which trainees may be assigned, activities in which trainees may engage, qualifications for trainee status, nature of responsibility assumed by the supervisor, and the structure, content, and organization of postdoctoral experience."

**Sec. 45.** G.S. 90-270.11(a) reads as rewritten:

"(a) Licensed Psychologist. -- The Board shall issue a permanent license to practice psychology to any applicant who pays an application fee and any applicable examination fee as specified in G.S. 90-270.18(b), ~~who~~ who passes an examination in psychology as prescribed by the Board, and who submits evidence verified by oath and satisfactory to the Board that he or she:

- (1) Is at least 18 years of age;
- (2) Is of good moral character;
- (3) Has received a doctoral degree based on a planned and directed program of studies in psychology from an institution of higher education. The degree program, wherever administratively housed, must be publicly identified and clearly labeled as a psychology program. The Board shall adopt rules implementing and defining these provisions, including, but not limited to, such factors as residence in the educational program, internship and

related field experiences, number of course credits, course content, numbers and qualifications of faculty, and program identification and identity.

- (4) Has had at least two years of acceptable and appropriate supervised experience germane to his or her training and intended area of practice as a psychologist as specified in G.S. 90-270.5(d)."

Sec. 46. The catch line of G.S. 90-405 reads as rewritten:

"§ 90-405. Definition. Definitions."

Sec. 47. G.S. 95-25.14(a)(1)a. reads as rewritten:

"a. Except as otherwise specifically provided in G.S. 95-25.5, 95-25.5;."

Sec. 48. G.S. 97-80(e) reads as rewritten:

"(e) A subpoena may be issued by the Commission and served in accordance with G.S. 1A-1, Rule 45. Upon a motion, the Commission may quash a subpoena if it finds that the evidence the production of which is required does not relate to a matter in issue, the subpoena does not describe with sufficient particularity the evidence the production of which is required, ~~or~~ or for any other reason sufficient in law the subpoena may be quashed. Each witness who appears in obedience to such subpoena of the Commission shall receive for attendance the fees and mileage for witnesses in civil cases in courts of the county where the hearing is held."

Sec. 49. G.S. 104E-9(a) reads as rewritten:

"(a) The Department of Environment, Health, and Natural Resources is authorized:

- (1) To advise, consult and cooperate with other public agencies and with affected groups and ~~industries;~~ industries.
- (2) To encourage, participate in, or conduct studies, investigations, public hearings, training, research, and demonstrations relating to the control of sources of radiation, the measurement of radiation, the effect upon public health and safety of exposure to radiation and related ~~problems;~~ problems.
- (3) To require the submission of plans, specifications, and reports for new construction and material alterations on (i) the design and protective shielding of installations for radioactive material and radiation machines and (ii) systems for the disposal of radioactive waste materials, for the determination of any radiation hazard and may render opinions, approve or disapprove such plans and ~~specifications;~~ specifications.
- (4) To collect and disseminate information relating to the sources of radiation, including but not limited to: (i) maintenance of a record of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations; and (ii) maintenance of a record of registrants and licensees possessing sources of radiation requiring registration or licensure under the provisions of this Chapter, and regulations hereunder, and any administrative or judicial action pertaining thereto; and to develop and implement a responsible data management program for the purpose of collecting and analyzing statistical information necessary to protect the public health and

safety. The Department may refuse to make public dissemination of information relating to the source of radiation within this State after the Department first determines that the disclosure of such information will contravene the stated policy and purposes of this Chapter and such disclosure would be against the health, welfare and safety of the public.

- (5) To respond to any emergency which involves possible or actual release of radioactive material; and to perform or supervise decontamination and otherwise protect the public health and safety in any manner deemed necessary. This section does not in any way alter or change the provisions of Chapter 166 of the North Carolina General Statutes concerning response during an emergency by the Department of Military and Veterans Affairs or its successor.
- (6) To develop and maintain a statewide environmental radiation program for monitoring the radioactivity levels in air, water, soil, vegetation, animal life, milk, and food as necessary to ensure protection of the public and the environment from radiation hazards.
- (7) To implement the provisions of this Chapter and the regulations duly promulgated under the Chapter.
- (8) To establish annual fees for activities under this Chapter based on actual administrative costs to be applied to training, enforcement, and inspection pursuant to the provisions of this Chapter and to charge and collect fees from operators and users of low-level radioactive waste facilities pursuant to the provisions of this Chapter.
- (9) To enter upon any lands and structures upon lands to make surveys, borings, soundings, and examinations as may be necessary to determine the suitability of a site for a low-level radioactive waste facility or low-level radioactive disposal facility. The Department shall give 30 days' notice of the intended entry authorized by this section in the manner prescribed for service of process by G.S. 1A-1, Rule 4. Entry under this section shall not be deemed a trespass or taking; provided, however, that the Department shall make reimbursement for any damage to such land or structures caused by such activities. This authority shall also apply to the North Carolina Low-Level Radioactive Waste Management Authority.
- (10) To encourage research and development and disseminate information on state-of-the-art means of handling and disposing of low-level radioactive waste.
- (11) ~~The Department shall~~ To promote public education and public involvement in the decision-making process for the siting and permitting of proposed low-level radioactive waste facilities. The Department shall assist localities in which facilities are proposed in collecting and receiving information relating to the suitability of the proposed site. At the request of a local government in which facilities are proposed, the Department shall direct the



appropriate agencies of State government to develop such relevant data as that locality shall reasonably request."

**Sec. 50.** G.S. 105-130.5(b) reads as rewritten:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

- (1) Interest upon the obligations of the United States or its possessions, to the extent included in federal taxable income: Provided, interest upon the obligations of the United States shall not be an allowable deduction unless interest upon obligations of the State of North Carolina or any of its political subdivisions is exempt from income taxes imposed by the United States; ~~States.~~
- (2) Payments received from a parent, subsidiary or affiliated corporation in excess of fair compensation in intercompany transactions which in the determination of the net income or net loss of such corporation were not allowed as a deduction under the Revenue Laws of this State; ~~State.~~
- (3) The deductible portion of dividends from stock issued by any corporation as provided under G.S. ~~105-130.7;~~ 105-130.7.
- (4) Losses in the nature of net economic losses sustained by the corporation in any or all of the five preceding years pursuant to the provisions of G.S. 105-130.8. Provided, a corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable net economic loss only from total income allocable to this State pursuant to the provisions of G.S. ~~105-130.8;~~ 105-130.8.
- (5) Contributions or gifts made by any corporation within the income year to the extent provided under G.S. ~~105-130.9;~~ 105-130.9.
- (6) Amortization in excess of depreciation allowed under the Code on the cost of any sewage or waste treatment plant, and facilities or equipment used for purposes of recycling or resource recovery of or from solid waste, or for purposes of reducing the volume of hazardous waste generated as provided in G.S. 105-130.10.
- (7) Depreciation of emergency facilities acquired prior to January 1, 1955. Any corporation shall be permitted to depreciate any emergency facility, as such is defined in section 168 of the Code, over its useful life, provided such facility was acquired prior to January 1, 1955, and no amortization has been claimed on such facility for State income tax ~~purposes; and purposes.~~
- (8) The amount of losses realized on the sale or other disposition of assets not allowed under section 1211(a) of the Code. All losses recognized on the sale or other disposition of assets must be included in determining State net income or loss in the year of disposition.
- (9) With respect to a shareholder of a regulated investment company, the portion of undistributed capital gains of such regulated investment company included in such shareholder's federal taxable income and on which the federal tax paid by the regulated investment company is allowed as a credit or refund to the shareholder under section 852 of the Code.



- (10) Repealed by Session Laws 1987, c. 778, s. 2.
- (11) If a deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code because the corporation claimed a federal tax credit against its federal income tax liability for the income year in lieu of a deduction, the amount by which the deduction was reduced and the amount of the deduction that was disallowed.
- (12) Reasonable expenses, in excess of deductions allowed under the Code, paid for reforestation and cultivation of commercially grown trees: provided, that this deduction shall be allowed only to those corporations in which the real owners of all the shares of such corporation are natural persons actively engaged in the commercial growing of trees, or the spouse, siblings, or parents of such persons. Provided, further, that in no case shall a corporation be allowed a deduction for the same reforestation or cultivation expenditure more than once.
- (13) The eligible income of an international banking facility to the extent included in determining federal taxable income, determined as follows:
- a. 'International banking facility' shall have the same meaning as is set forth in the laws of the United States or regulations of the board of governors of the federal reserve system.
  - b. The eligible income of an international banking facility for the taxable year shall be an amount obtained by multiplying State taxable income as determined under G.S. 105-130.3 (determined without regard to eligible income of an international banking facility and allocation and apportionment, if applicable) for such year by a fraction, the denominator of which shall be the gross receipts for such year derived by the bank from all sources, and the numerator of which shall be the adjusted gross receipts for such year derived by the international banking facility from:
    1. Making, arranging for, placing or servicing loans to foreign persons substantially all the proceeds of which are for use outside the United States;
    2. Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer) or with other international banking facilities; or
    3. Entering into foreign exchange trading or hedging transactions related to any of the transactions described in this paragraph.
  - c. The adjusted gross receipts shall be determined by multiplying the gross receipts of the international banking facility by a fraction the numerator of which is the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States and the denominator of which is the average amount for the taxable year of all assets of the international banking facility.

- d. For the purposes of this subsection the term 'foreign person' means:
1. An individual who is not a resident of the United States;
  2. A foreign corporation, a foreign partnership or a foreign trust, as defined in section 7701 of the Code, other than a domestic branch thereof;
  3. A foreign branch of a domestic corporation (including the taxpayer);
  4. A foreign government or an international organization or an agency of either, or
  5. An international banking facility.

For purposes of this paragraph, the terms 'foreign' and 'domestic' shall have the same meaning as set forth in section 7701 of the Code.

- (14) The amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a tax credit allowed against the corporation's federal income tax liability. This deduction may be claimed only in the year in which the Code requires that the asset's basis be reduced. In computing gain or loss on the asset's disposition, this deduction shall be considered as depreciation.
- (15) The amount paid during the income year, pursuant to 7 U.S.C. § 1445-2, as marketing assessments on tobacco grown by the corporation in North Carolina.
- (16) The amount of natural gas expansion surcharges collected by a natural gas local distribution company under G.S. 62-158."

**Sec. 51.** G.S. 105-275(5) reads as rewritten:

- "(5) Vehicles that the United States government gives to veterans on account of disabilities they suffered in World War II, the Korean Conflict, or the ~~Viet Nam~~ Vietnam Era so long as they are owned by:
- a. A person to whom a vehicle has been given by the United States government or
  - b. Another person who is entitled to receive such a gift under Title 38, section 252, United States Code Annotated."

**Sec. 52.** G.S. 106-1 is repealed.

**Sec. 53.** G.S. 106-2 reads as rewritten:

~~"§ 106-2. Department of Agriculture, Immigration, and Statistics established; Agriculture established; Board of Agriculture, membership, terms of office, etc.~~

The Department of ~~Agriculture, Immigration, and Statistics~~ Agriculture is created and established and shall be under the control of the Commissioner of Agriculture, with the consent and advice of a board to be styled 'The Board of Agriculture.' The Board of Agriculture shall consist of the Commissioner of Agriculture, who shall be ex officio a member and chairman thereof and shall preside at all meetings, and of 10 other members from the State at large, so distributed as to reasonably represent the different sections and agriculture of the State. In the appointment of the members of the Board the Governor shall also take into consideration the different agricultural interests of the State, and shall appoint one member who shall

be a practical tobacco farmer to represent the tobacco farming interest, one who shall be a practical cotton grower to represent the cotton interest, one who shall be a practical truck farmer or general farmer to represent the truck and general farming interest, one who shall be a practical dairy farmer to represent the dairy and livestock interest of the State, one who shall be a practical poultryman to represent the poultry interest of the State, one who shall be a practical peanut grower to represent the peanut interests, one who shall be a ~~man~~ experienced in marketing to represent the marketing of products of the State. The members of such Board shall be appointed by the Governor by and with the consent of the Senate, when the terms of the incumbents respectively expire. The term of office of such members shall be six years and until their successors are duly appointed and qualified. The terms of office of the five members constituting the present Board of Agriculture shall continue for the time for which they were appointed. In making appointments for the enlarged Board of Agriculture, the Governor shall make the appointments so that the term of three members will be for two years, three for four and four for six years. Thereafter the appointments shall be made for six years. Vacancies in such Board shall be filled by the Governor for the unexpired term. The Commissioner of Agriculture and the members of the Board of Agriculture shall be practical farmers engaged in their profession."

**Sec. 54.** G.S. 106-3, 106-6, 106-7, 106-8, and 106-9.1 are repealed.

**Sec. 55.** G.S. 113-133.1(e) reads as rewritten:

"(e) Because of strong community interest expressed in their retention, the local acts or portions of local acts listed in this section are not repealed. The following local acts are retained to the extent they apply to the county for which listed:

Alleghany: Session Laws 1951, Chapter 665; Session Laws 1977, Chapter 526; Session Laws 1979, Chapter 556.

Anson: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 286.

Ashe: Former G.S. 113-111; Session Laws 1951, Chapter 665.

Avery: Former G.S. 113-122.

Beaufort: Session Laws 1947, Chapter 466, as amended by Session Laws 1979, Chapter 219; Session Laws 1957, Chapter 1364; Session Laws 1971, Chapter 173.

Bertie: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 287.

Bladen: Public-Local Laws 1933, Chapter 550, Section 2 (as it pertains to fox season); Session Laws 1961, Chapter 348 (as it applies to Bladen residents fishing in Robeson County); Session Laws 1961, Chapter 1023; Session Laws 1971, Chapter 384.

Brunswick: Session Laws 1975, Chapter 218.

Buncombe: Public-Local Laws 1933, Chapter 308.

Burke: Public-Local Laws 1921, Chapter 454; Public-Local Laws 1921 (Extra Session), Chapter 213, Section 3 (with respect to fox seasons); Public-Local Laws 1933, Chapter 422, Section 3; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636.

Caldwell: Former G.S. 113-122; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636; Session Laws 1979, Chapter 507.

Camden: Session Laws 1955, Chapter 362 (to the extent it applies to inland fishing waters); Session Laws 1967, Chapter 441.

Carteret: Session Laws 1955, Chapter 1036; Session Laws 1977, Chapter 695.

Caswell: Public-Local Laws 1933, Chapter 311; Public-Local Laws 1937, Chapter 411.

Catawba: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 1037.

Chatham: Public-Local Laws 1937 Chapter 236; Session Laws 1963, Chapter 271.

Chowan: Session Laws 1979, Chapter 184; Session Laws 1979, Chapter 582.

Cleveland: Public Laws 1907, Chapter 388; Session Laws 1951, Chapter 1101; Session Laws 1979, Chapter 587.

Columbus: Session Laws 1951, Chapter 492, as amended by Session Laws 1955, Chapter 506.

Craven: Session Laws 1971, Chapter 273, as amended by Session Laws 1971, Chapter 629.

Cumberland: Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 471.

Currituck: Session Laws 1959, Chapter 545.

Dare: Session Laws 1973, Chapter 259.

Davie: Former G.S. 113-111, as amended by Session Laws 1947, Chapter 333.

Duplin: Session Laws 1965, Chapter 774; Session Laws 1973 (Second Session 1974), Chapter 1266; Session Laws 1979, Chapter 466.

Edgecombe: Session Laws 1961, Chapter 408.

Gates: Session Laws 1959, Chapter 298; ~~Session Laws 1973, Chapter 124, amending Session Laws 1969, Chapter 121 (as it pertains to wild turkeys);~~ Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748.

Granville: Session Laws 1963, Chapter 670.

Greene: Session Laws 1975, Chapter 219; Session Laws 1979, Chapter 360.

Halifax: Public-Local Laws 1925, Chapter 571, Section 3 (with respect to fox-hunting seasons); Session Laws 1947, Chapter 954; Session Laws 1955, Chapter 1376.

Harnett: Former G.S. 113-111, as modified by Session Laws 1977, Chapter 636.

Haywood: Former G.S. 113-111, as modified by Session Laws 1963, Chapter 322.

Henderson: Former G.S. 113-111.

Hertford: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67.

Hoke: Session Laws 1963, Chapter 267.

Hyde: Public-Local Laws 1929, Chapter 354, Section 1 (as it relates to foxes); Session Laws 1951, Chapter 932.

Iredell: Session Laws 1979, Chapter 577.

Jackson: Session Laws 1965, Chapter 765; Session Laws 1971, Chapter 424.

Johnston: Session Laws 1975, Chapter 342.

Jones: Session Laws 1979, Chapter 441.

Lee: Session Laws 1963, Chapter 271; Session Laws 1977, Chapter 636.

Lenoir: Session Laws 1979, Chapter 441.

Lincoln: Public-Local Laws 1925, Chapter 449, Sections 1 and 2; Session Laws 1955, Chapter 878.

Madison: Public-Local Laws 1925, Chapter 418, Section 4; Session Laws 1951, Chapter 1040.

Martin: Session Laws 1955, Chapter 1376; Session Laws 1977, Chapter 636.

Mitchell: Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68.

Montgomery: Session Laws 1977 (Second Session 1978), Chapter 1142.

Nash: Session Laws 1961, Chapter 408.

New Hanover: Session Laws 1971, Chapter 559; Session Laws 1975, Chapter 95.

Northampton: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67; Session Laws 1979, Chapter 548.

Orange: Public-Local Laws 1913, Chapter 547.

Pamlico: Session Laws 1977, Chapter 636.

Pender: Session Laws 1961, Chapter 333; Session Laws 1967, Chapter 229; Session Laws 1969, Chapter 258, as amended by Session Laws 1973, Chapter 420; Session Laws 1977, Chapter 585, as amended by Session Laws 1985, Chapter 421; Session Laws 1977, Chapter 805; Session Laws 1979, Chapter 546.

Perquimans: Former G.S. 113-111; Session Laws 1973, Chapter 160; Session Laws 1973, Chapter 264; Session Laws 1979, Chapter 582.

Polk: Session Laws 1975, Chapter 397; Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Randolph: Public-Local Laws 1941, Chapter 246; Session Laws 1947, Chapter 920.

Robeson: Public-Local Laws 1924 (Extra Session), Chapter 92; Session Laws 1961, Chapter 348.

Rockingham: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310.

Rowan: Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 106, and Session Laws 1977, Chapter 500; Session Laws 1979, Chapter 556.

Rutherford: Session Laws 1973, Chapter 114; Session Laws 1975, Chapter 397.

Sampson: Session Laws 1979, Chapter 373.

Scotland: Session Laws 1959, Chapter 1143; Session Laws 1977, Chapter 436.



Stokes: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310; Session Laws 1979, Chapter 556.

Surry: Public-Local Laws 1925, Chapter 474, Section 6 (as it pertains to fox seasons); Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Swain: Public-Local Laws 1935, Chapter 52; Session Laws 1953, Chapter 270; Session Laws 1965, Chapter 765.

Transylvania: Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238.

Tyrrell: Former G.S. 113-111; Session Laws 1953, Chapter 685.

Wake: Session Laws 1973 (Second Session 1974), Chapter 1382.

Washington: Session Laws 1947, Chapter 620.

Wayne: Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 342, as amended by Session Laws 1977, Chapter 43; Session Laws 1975, Chapter 343, as amended by Session Laws 1977, Chapter 45; Session Laws 1977, Chapter 695.

Wilkes: Former G.S. 113-111, as amended by Session Laws 1971, Chapter 385; Session Laws 1951, Chapter 665; Session Laws 1973, Chapter 106; Session Laws 1979, Chapter 507.

Yadkin: Former G.S. 113-111, as amended by Session Laws 1953, Chapter 199; Session Laws 1979, Chapter 507.

Yancey: Session Laws 1965, Chapter 522."

**Sec. 55.1.** (a) The catch line of G.S. 113-229 reads as rewritten:  
*"§ 113-229. Permits to dredge or fill in or about estuarine waters or ~~state-owned~~ State-owned lakes."*

(b) G.S. 113-229(a) reads as rewritten:

"(a) Except as hereinafter provided before any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or ~~state-owned~~ State-owned lakes, the party or parties desiring to do such shall first obtain a permit from the Department. Granting of the State permit shall not relieve any party from the necessity of obtaining a permit from the United States Army Corps of Engineers for work in navigable waters, if the same is required. The Department shall continue to coordinate projects pertaining to navigation with the United States Army Corps of Engineers."

(c) G.S. 113-229(m) reads as rewritten:

"(m) This section shall apply to all persons, firms, or corporations, their employees, agents, or contractors proposing excavation or filling work in the estuarine waters, tidelands, marshlands and ~~state-owned~~ State-owned lakes within the State, and the work to be performed by the State government or local governments. Provided, however, the provisions of this section shall not apply to the activities and functions of the Department and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. 130A-346 through G.S. 130A-349. Provided, further, this section shall not impair the riparian right of ingress and egress to navigable waters."

**Sec. 56.** G.S. 113-291.9(g) reads as rewritten:

"(g) This section shall not apply to Buncombe, Madison, McDowell, or Yancey ~~Counties~~, County."

**Sec. 57.** G.S. 113-315.5 reads as rewritten:

"§ 113-315.5. *Alternative method for collection of assessment.*

As an alternate method for the collection of assessments provided for in G.S. 113-310, G.S. 113-315.4, upon the request or petition of the agency and action by the Marine Fisheries Commission as prescribed in G.S. 113-313, the Secretary shall notify, by letter, all persons or firms licensed by the Marine Fisheries Commission to engage in business and commerce as may be directly affected by the paying of the assessment, that on and after the date specified in the letter the assessment shall become due and payable, and shall be remitted by said persons or firms to the Secretary who shall thereupon pay the amount of the assessments to the agency. The books and records of all such persons and firms shall at all times during regular business hours be open for inspection by the Secretary or his duly authorized agents."

**Sec. 58.** G.S. 113A-103(5)c.3. reads as rewritten:

"3. Whether or ~~not~~ dredging or filling is involved in the maintenance or improvement."

**Sec. 59.** G.S. 115C-12(22) reads as rewritten:

"(22) Duty to Monitor the Decisions of Teachers to Leave the Teaching Profession. -- The State Board of Education shall monitor and compile an annual report on the decisions of teachers to leave the teaching profession. The State Board shall adopt standard procedures for each local board of education to use in requesting the information from teachers who are not continuing to work as teachers in the local school administrative unit and shall require each local ~~boards~~ board of education to report the information to the State Board in a standard format adopted by the State Board."

**Sec. 60.** G.S. 115C-48 reads as rewritten:

"§ 115C-48. *Penalties for certain conduct.*

(a) Members of local boards of ~~election~~ education are criminally liable for certain conduct as provided in G.S. 14-234 through 14-237.

(b) Members of local boards of ~~election~~ education are civilly liable for certain conduct as provided in G.S. 115C-441."

**Sec. 61.** G.S. 115C-81(a1) reads as rewritten:

"(a1) The Basic Education Program shall describe the education program to be offered to every child in the public schools. It shall provide every student in the State equal access to a Basic Education Program. Instruction shall be offered in the areas of arts, communication skills, physical education and personal health and safety, mathematics, media and computer skills, science, second languages, social studies, and vocational and technical education.

Instruction in vocational and technical education under the Basic Education Program shall be based on factors including:

- (1) The integration of academic and vocational and technical education;
- (2) A sequential course of study leading to both academic and occupational competencies;
- (3) Increased student work skill attainment and job placement;

- (4) Increased linkages, where geographically feasible, between public schools and community colleges, so the public schools can emphasize academic preparation and the community colleges can emphasize specific job training; and
- (5) Instruction and experience, to the extent practicable, in all aspects of the industry the students are prepared to enter."

**Sec. 62.** G.S. 115C-81(d) reads as rewritten:

"(d) The standard course of study as it exists on January 1, 1985, and as subsequently revised by the State Board, shall remain in effect until its components have been fully incorporated and implemented as a part of the Basic Education, Education Program."

**Sec. 64.** G.S. 115D-32(c) reads as rewritten:

"(c) The board of trustees of each institution may apply institutional funds provided in accordance with G.S. 115D-54(3) G.S. 115D-54(b)(3) for such purposes as may be determined by the board of trustees of the institution."

**Sec. 65.** G.S. 116-233(e) reads as rewritten:

"(e) Of the initial members appointed under G.S. 116-233(5), G.S. 116-233(a)(5), one member shall serve a term to expire June 30, 1987, and one member shall serve a term to expire June 30, 1989. Subsequent appointments shall be for four-year terms. The initial members appointed under G.S. 116-233(6), G.S. 116-233(a)(6), shall be appointed for terms to expire June 30, 1987. Subsequent appointments shall be for two-year terms. The initial members appointed under G.S. 116-233(7) G.S. 116-233(a)(7) shall be appointed for terms to expire January 15, 1989. Successors shall be appointed for four-year terms."

**Sec. 66.** G.S. 116-234(d) reads as rewritten:

"(d) Members of the Board of Trustees, other than ex officio members under G.S. 116-233(3), G.S. 116-233(a)(3), shall receive such per diem compensation and necessary travel and subsistence expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions. Ex officio members under G.S. 116-233(3) G.S. 116-233(a)(3) shall be reimbursed for travel expenses as provided by G.S. 138-6."

**Sec. 67.** G.S. 126-7(c)(7) reads as rewritten:

"(7) An employee who disputes the fairness of his or her performance appraisal or the amount of the a performance bonus awarded or who believes that he or she was unfairly denied a career growth recognition award or performance bonus shall first discuss the problem with his or her supervisor. Appeals of the supervisor's decision shall be made only to the grievance committee or internal performance review board of the department, agency, or institution which shall make a recommendation to the head of the department, agency, or institution for final decision. The State Personnel Director shall help a department, agency, or institution establish an internal performance review board or, if it includes employee members, to use its existing grievance committee to hear performance pay disputes. Notwithstanding G.S. 150B-2(2) and G.S. 126-22, 126-25, and 126-34, performance pay disputes,

including disputes about individual performance appraisals, shall not be considered contested case issues."

**Sec. 68.** G.S. 128-30(b1) reads as rewritten:

"(b1) **Pick Up of Employee Contributions.** -- Anything within this section to the contrary notwithstanding, effective July 1, 1982, an employer, pursuant to the provisions of section 414(h)(2) of the Internal Revenue Code of 1954 as amended, may elect to pick up and pay the contributions which would be payable by the employees as members under subsection (b) of this section with respect to the service of employees after June 30, 1982.

The members' contributions picked up by an employer shall be designated for all purposes of the Retirement System as member contributions, except for the determination of tax upon a distribution from the System. These contributions shall be credited to the annuity savings fund and accumulated within the fund in a member's account which shall be separately established for the purpose of accounting for picked-up contributions.

Member contributions picked up by an employer shall be payable from the same source of funds used for the payment of compensation to a member. A deduction shall be made from a member's compensation equal to the amount of his contributions picked up by his employer. This deduction, however, shall not reduce his compensation as defined in subdivision (7a) of G.S. 128-21. Picked-up contributions shall be transmitted to the System monthly for the preceding month by means of a warrant drawn by the employer and payable to the Local Governmental Employees' Retirement System and shall be accompanied by a schedule of the picked-up contributions on such forms as may be prescribed. In the case of a failure to fulfill these conditions the provisions of subsection ~~(d)(3)~~ ~~(g)(3)~~ of this section shall apply."

**Sec. 69.** G.S. 130A-131.15(c) reads as rewritten:

"(c) The Department shall evaluate all of the adolescent pregnancy prevention projects funded as a result of this program at least yearly and shall report its findings to the Commission for Health Services, the Joint Legislative Commission on Governmental Operations, and the Chairmen of the House Appropriations Subcommittee on Natural and Economic Resources, and the Senate Appropriations Committee on Natural and Economic Resources by April 1 of each year. The evaluation shall be conducted by a firm or individual external to the Department. Any evaluation of these projects shall include a study of the effectiveness of the project in reducing the pregnancy rate within the target population."

**Sec. 70.** G.S. 130A-294(h)(5) reads as rewritten:

"(5) No hazardous waste disposal facility operated pursuant to Chapter 130B of the General Statutes shall be located within 25 miles of a polychlorinated biphenyl landfill facility."

**Sec. 71.** G.S. 131E-7(a)(6) reads as rewritten:

"(6) To establish a fee schedule for services received from hospital facilities and to make services available regardless of ability to pay; pay."

**Sec. 72.** G.S. 131E-115 reads as rewritten:

"§ 131E-115. *Legislative intent.*



It is the intent of the General Assembly to promote the interests and well-being of the patients in nursing homes and homes for the aged and disabled licensed pursuant to G.S. 131E-102, and patients in a nursing home operated by a hospital which is licensed under Article 5 of ~~G.S. Chapter 131E~~, Chapter 131E of the General Statutes. It is the intent of the General Assembly that every patient's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist the patient in the fullest possible exercise of these rights."

**Sec. 73.** G.S. 131E-250(b) reads as rewritten:

"(b) A public hospital or a State hospital may donate medical equipment it determines is no longer needed by the hospital ~~to any; to any of the following if the property so donated is to be used by a hospital or medical facility in another country;~~

- (1) ~~Corporation which~~ A corporation that is exempt from taxation under section 501(c) of the Internal Revenue Code of ~~1986; 1986.~~
- (2) The United States or any agency ~~thereof; of it.~~
- (3) ~~Government~~ The government of a foreign country or any political subdivision of that ~~country; country.~~
- (4) The United Nations or an agency of ~~it; or to it.~~
- (5) Other eleemosynary institutions and ~~groups~~ groups.

~~if the property so donated is to be used by a hospital or medical facility in another country."~~

**Sec. 73.1.** G.S. 135-3(8)c. reads as rewritten:

"c. Should a beneficiary who retired on an early or service retirement allowance under this Chapter be reemployed, or otherwise engaged to perform services, by an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee-for-service basis, whether contractual or otherwise, and if such beneficiary earns an amount in any calendar year which exceeds fifty percent (50%) of the reported compensation, excluding terminal payments, during the 12 months of service preceding the effective date of retirement, or twenty thousand dollars (\$20,000), whichever is greater, as hereinafter indexed, then the retirement allowance shall be suspended as of the first day of the month following the month in which the reemployment earnings exceed the amount above, for the balance of the calendar year. The retirement allowance of the beneficiary shall be reinstated as of January 1 of each year following suspension. The amount that may be earned before suspension shall be increased on January 1 of each year by the ratio of the Consumer Price Index to the Index one year earlier, calculated to the nearest tenth of a percent (1/10 of 1%)."

**Sec. 74.** G.S. 135-5(b13)(2)b. reads as rewritten:

"b. This allowance shall also be governed by the provisions of ~~G.S. 135-5(b9)(2)b. c.~~ 135-5(b9)(2)b., c., and d."

**Sec. 75.** G.S. 135-5(b14)(2)c. reads as rewritten:



- "c. If the member's service retirement date occurs before his 60th birthday and prior to the completion of 30 or more years of creditable service, the service retirement allowance shall be the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. ~~135(b14)(2)b.~~ 135-5(b14)(2)b."

**Sec. 76.** G.S. 135-64(b) reads as rewritten:

"(b) In the event of the death of a former member prior to his sixty-fifth birthday while in receipt of a retirement allowance pursuant to his retirement under the provisions of G.S. 135-59, there shall be paid to the former member's surviving spouse, if any, an annual retirement allowance, payable monthly, which shall commence on the first day of the calendar month next following the date of death of the former member and shall be continued on the first day of each month thereafter until the remarriage or death of the spouse. The amount of any such allowance shall be equal to one half of the allowance to which the former member would have been entitled under the provisions of G.S. 135-58 if he had remained in service from his disability retirement date to his date of death with no change in his final compensation or status and had then retired, reduced by two percent (2%) thereof for each full year, if any, by which the age of the former member at date of death exceeds that of his spouse."

**Sec. 77.** G.S. 143-23(c) reads as rewritten:

"(c) Transfers or changes as between objects or line items in the budget of the Senate may be made by the President Pro Tempore of the ~~Senate;~~ Senate."

**Sec. 78.** G.S. 143-23(d) reads as rewritten:

"(d) Transfers or changes as between objects or line items in the budget of the House of Representatives may be made by the Speaker of the House of ~~Representatives;~~ Representatives."

**Sec. 79.** G.S. 143-128(c)(2)b. reads as rewritten:

"b. Hispanic, that is, a person of Spanish or ~~Portugese~~ Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;"

**Sec. 80.** G.S. 143-215.26(b) reads as rewritten:

"(b) The Department shall send a copy of each completed application to the State Health Director, the Wildlife Resources Commission, the Department of Transportation, and other State and local agencies it considers appropriate for review and comment."

**Sec. 81.** G.S. 143-247.2(a) reads as rewritten:

"(a) Account. -- The Wildlife Conservation Account is established within the Wildlife Resources Fund and is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Revenue is credited to the Account from donations of income tax refunds, from other donations, and from revenue derived from the sale of wildlife resources license plates. The Commission may use revenue in the Account only for the following purposes:

- (1) To manage, preserve, or protect wildlife species that are endangered, threatened, or of special concern and are included on the State's protected animal lists.

- (2) To manage, preserve, or protect nongame wildlife species that are not on the State's protected animal lists.
- (3) To administer and enforce nongame wildlife programs under the jurisdiction of the Commission."

**Sec. 82.** G.S. 143-291.3 reads as rewritten:

"§ 143-291.3. *Counterclaims by State.*

The filing of a claim under this Article shall constitute consent by the plaintiff(s) to the jurisdiction of the Industrial Commission to hear and determine any counterclaim of one hundred fifty thousand dollars ~~(\$100,000)~~ (\$150,000) or less which may be filed on behalf of a State department, institution, or agency or a county or city board of education. A final award of the Industrial Commission awarding damages on a counterclaim shall be filed with the Clerk of the Superior Court of the county wherein the case was heard. These awards shall be docketed and shall be enforceable in the same manner as judgments of the General Court of Justice. Notwithstanding the provisions of Rule 12 of the Rules of Civil Procedure, nothing in this section shall require the filing of such a counterclaim."

**Sec. 83.** G.S. 143-299.2 reads as rewritten:

"§ 143-299.2. *Limitation on payments by the State.*

The maximum amount which the State may pay cumulatively to all claimants on account of injury and damage to any one person, whether the claim or claims are brought under this Article or Article 31A or Article 31B, shall be one hundred fifty thousand dollars ~~(\$100,000)~~ (\$150,000), less any commercial liability insurance purchased by the State and applicable to the claim or claims under G.S. 143-291(b), 143-300.6(c), or 143-300.16(c). The fact that a claim or claims may be brought under more than one Article under this Chapter shall not increase the above maximum liability of the State."

**Sec. 84.** G.S. 143-318.11(a) reads as rewritten:

"(a) Permitted Purposes. -- It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

- (1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.
- (2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar ~~award~~ award.
- (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give

instructions to an attorney concerning the handling or settlement of a claim, judicial action, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is ~~concluded~~; concluded.

- (4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public ~~body~~; body.
- (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.
- (6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.
- (7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct."

**Sec. 85.** G.S. 143-355(l) reads as rewritten:

"(l) Each unit of local government that provides public water services or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department. The Department shall provide technical assistance with the preparation of plans to units of local government upon request and to the extent that the Department has resources available to provide assistance. At a minimum, local units of government shall include in local water supply plans all information that is readily available to them. However this subsection shall be construed to require the preparation of local water supply plans only to the extent that technical assistance is made available to units of local government from the Department. Plans shall include present and projected population, industrial development, and water use within the service area, present and future water supplies, an estimate of the technical assistance that may be needed at the local level to address projected water needs, and any other related

information as the Department may require in the preparation of a State water supply plan. Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. Local plans and revised plans shall be submitted to the Department once they have been approved by the unit(s) of local government."

**Sec. 86.** G.S. 143-621 reads as rewritten:

"§ 143-621. *Purpose and intent.*

The purpose and intent of this Article is to increase the affordability, efficiency, and fairness of health care coverage for small employers.

~~The~~ This Article promotes the development of voluntary purchasing Alliances to provide affordable health care coverage for self-employed individuals and employees of participating small employers in the manner of large employer groups. The Alliances will allow members to benefit from the contracting expertise and the administrative savings that can result from the pooling of small employers and self-employed individuals.

These Alliances will make available through their contracting processes a choice of Accountable Health Carriers that arrange for quality health services in a cost-effective manner. ~~The~~ This Article establishes rules for fair competition among competing Accountable Health Carriers. These rules include the offering of comparable benefits by competing Accountable Health Carriers, risk assessment, and risk adjustment to assure competition based on a fair allocation of risk among Accountable Health Carriers, and the providing of data that measures clinical outcomes and other valid areas of Accountable Health Carrier performance.

Carriers throughout the health care coverage market for small employers are required to use adjusted community rating, guarantee the continuity of coverage, adhere to limitations on the use of preexisting conditions, abolish individual medical underwriting, and follow rules limiting the use of participation requirements."

**Sec. 87.** G.S. 143-622(15)a.1. reads as rewritten:

"1. Lost coverage under another health plan as a result of termination of employment, the termination of coverage under another health plan, ~~or~~ the death of a spouse spouse, or divorce and requests enrollment in a qualified health care plan within 30 days after termination of coverage; or"

**Sec. 88.** G.S. 143-627(d) reads as rewritten:

"(d) Of the initially elected members of each Alliance Board, six members shall be designated to serve two-year terms and the remaining five members shall ~~have~~ serve four-year terms. Thereafter, the term of an elected member shall be four years."

**Sec. 89.** G.S. 143-627(e) reads as rewritten:

"(e) Vacancies on an Alliance Board shall be filled for the remaining period of the term by a majority vote of the remaining Board members. A member appointed to fill a vacancy may serve for the remainder of the term and until a qualified successor is elected for a new term."

**Sec. 90.** G.S. 143-627(i) reads as rewritten:



"(i) The Alliance Board shall meet at times and places as it determines necessary to operate the Alliance in accordance with this section and G.S. 143-628. Such meetings shall be governed by the procedures and ~~polices~~ policies set forth by the North Carolina Open Meetings Law, Article 33C of Chapter 143 of the General Statutes."

**Sec. 91.** G.S. 143-628(2) reads as rewritten:

"(2) Enter into contracts with member small employers pursuant to G.S. 143-630;"

**Sec. 92.** G.S. 143-628(7) reads as rewritten:

"(7) Impose annual surcharges established at the beginning of the fiscal year to be paid monthly by member small employers for necessary costs incurred in connection with the operation of the Alliance. The amount of annual surcharges shall cover any default on insurer premium payments by member small ~~employer; employers;~~ employers;"

**Sec. 93.** G.S. 143-629(d)(5) reads as rewritten:

"(5) Comply with all rules regarding rating, underwriting, claims handling, sales, solicitation, licensing, unfair trade practices and other provisions in this Article and Chapter 58 of the General ~~Statutes, Statutes;~~ Statutes;"

**Sec. 94.** G.S. 143-629(d)(8) reads as rewritten:

"(8) Provide a procedure for addressing grievances that arise between the Accountable Health Carrier and the Alliance, member small employers, or employee ~~enrollees; and enrollees.~~"

**Sec. 95.** G.S. 143-632(f) reads as rewritten:

"(f) An Alliance shall notify the Board of any marketing practices or materials that it finds contrary to the fair and affirmative marketing requirements of this Article. Furthermore, the Board shall monitor compliance with this section, including the conduct of Accountable Health Carriers and their agents, brokers, or contractors, and shall report to the Department of Insurance any unfair trade practices and misleading or unfair conduct that has been reported to the Board by Alliances, agents, consumers, or any other individual. The Department of Insurance shall investigate all reports and, upon a finding of noncompliance with this section or of unfair and misleading practices, shall take action against violators as permitted under Chapter 58 of the General Statutes or this Article. The Board shall forward all reports of cases ~~or~~ of abuse to the Department of Insurance for investigation."

**Sec. 96.** G.S. 143A-11 reads as rewritten:

"§ 143A-11. *Principal departments.*

Except as otherwise provided by this Chapter, or the State Constitution, all executive and administrative powers, duties and functions, not including those of the General Assembly and the judiciary, previously vested by law in the several State agencies, are vested in the following principal offices or departments:

- (1) Office of the Governor.
- (2) Office of the Lieutenant Governor.
- (3) Department of the Secretary of State.
- (4) Department of State Auditor.



- (5) Department of State Treasurer.
- (6) Department of Public Instruction.
- (7) Department of Justice.
- (8) Department of Agriculture.
- (9) Department of Labor.
- (10) Department of Insurance.
- ~~(11) Department of Administration.~~
- ~~(12) Department of Transportation.~~
- ~~(13) Department of Environment, Health, and Natural Resources.~~
- (14) Repealed by Session Laws 1973, c. 476, s. 6.
- ~~(15) Department of Social Rehabilitation and Control.~~
- ~~(16) Department of Commerce.~~
- (17), (18) Repealed by Session Laws 1973, c. 476, s. 6.
- (19) Repealed by Session Laws 1973, c. 620, s. 9."

Sec. 97. G.S. 143B-168.15(b) reads as rewritten:

"(b) Depending on local, regional, or ~~Statewide~~ statewide needs, funds may be used to support activities and services that shall be made available and accessible to providers, children, and families on a voluntary basis. Of the funds allocated to local partnerships that are designated by the Secretary for direct services, seventy-five percent (75%) shall be used for any one or more of the following activities and services:

- (1) Child day care services, including:
  - a. Child day care subsidies to reduce waiting lists;
  - b. Raising the county child day care subsidy rate to the State market rate, if applicable, in return for improvements in the quality of child day care services;
  - c. Raising the income eligibility for child day care subsidies to seventy-five percent (75%) of the State median family income;
  - d. Start-up funding for child day care providers;
  - e. Assistance to enable child day care providers to conform to licensing and building code requirements;
  - f. Child day care resources and referral services;
  - g. Enhancement of the quality of child day care provided;
  - h. Technical assistance for child day care providers;
  - i. Quality grants for child day care centers or family child day care homes;
  - j. Expanded services or enhanced rates for children with special needs;
  - k. Head Start services;
  - l. Development of comprehensive child day care services that include child health and family support;
  - m. Activities to reduce staff turnover;
  - n. Activities to serve children with special needs;
  - o. Transportation services related to providing child day care services;
  - p. Evaluation of plan implementation of child day care services; and
  - q. Needs and resources assessments for child day care services.

- (2) Family- and child-centered services, including early childhood education and child development services, including:
  - a. Enhancement of the quality of family- and child-centered services provided;
  - b. Technical assistance for family- and child-centered services;
  - c. Needs and resource assessments for family- and child-centered services;
  - d. Home-centered services; and
  - e. Evaluation of plan implementation of family- and child-centered services.
- (3) Other appropriate activities and services for child day care providers and for family- and child-centered services, including:
  - a. Staff and organizational development, leadership and administrative development, technology assisted education, and long-range planning; and
  - b. Procedures to ensure that infants and young children receive needed health, immunization, and related services."

**Sec. 98.** G.S. 143B-390.1 is recodified as G.S. 143B-289.19.

**Sec. 99.** G.S. 143B-426.39A reads as rewritten:

"§ 143B-426.39A. *Information Highway Grants Advisory Council.*

(a) The Information Highway Grants Advisory Council is created within the Office of the State Controller. The Council shall consist of 18 members as follows:

- (1) Five members to be appointed by the Governor.
- (2) Four members to be appointed by the Speaker of the House of Representatives, at least one of whom shall be a public member.
- (3) Four members to be appointed by the President Pro Tempore of the Senate, at least one of whom shall be a public member.
- (4) One representative from the Department of Public Instruction to be designated by the Superintendent of Public Instruction.
- (5) One representative from the Department of Community Colleges to be designated by the President of the Community College System.
- (6) One representative from ~~the~~ The University of North Carolina to be designated by the President of The University of North Carolina.
- (7) One representative from the Office of the State Controller, to be designated by the State Controller.
- (8) One representative from the North Carolina School of Science and Mathematics, to designated by the Board of Trustees.

Members of the Council shall be appointed by September 1, 1994, and shall serve two-year terms. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair from among the ~~member~~ members of the General Assembly they appoint to the Council. Vacancies on the Council shall be filled in the same manner as the original appointment.

The members of the Council shall not receive compensation but may receive subsistence and travel in accordance with G.S. 120-3.1, G.S. 138-5, and G.S. 138-6 as appropriate.

(b) The Information Highway Grants Advisory Council shall meet as often as needed to transact its business. The first meeting of the Council shall be called by the cochair. A majority of the members of the Council shall constitute a quorum. The Office of the State Controller shall provide staff and space to the Council.

(c) The Information Highway Grants Advisory Council shall advise the Governor, the General Assembly, and Office of the State Controller on matters pertaining to the North Carolina Information Highway. The Information Highway Grants Advisory Council shall, by September 30, 1994, develop criteria for evaluating grant applications under this section. The Information Highway Grants Advisory Council shall evaluate the grant applications and make recommendations to the State Controller regarding grant recipients by December 1, 1994. The State Controller shall not award grants before December 15, 1994. The State Controller shall notify the Information Highway Grants Advisory Council as to whom the intended grant recipients are ~~fifteen~~ 15 days prior to awarding the grants."

**Sec. 100.** G.S. 147-45 reads as rewritten:

"§ 147-45. *Distribution of copies of State publications.*

The Secretary of State shall, at the State's expense, as soon as possible after publication, provide such number of copies of the Session Laws and Senate and House Journals to federal, State, and local governmental officials, departments and agencies, and to educational institutions of instruction and exchange use, as is set out in the table below:

<u>Agency or Institution</u>	<u>Session Laws</u>	<u>Assembly Journals</u>
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
State Board of Education	1	0
Department of Public Instruction	3	1
Controller	1	0
Technical Assistance Centers	1 ea.	0
Department of Community Colleges	3	1
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture, Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0
Purchase and Contract	2	0

Policy and Development	1	0
Veterans Affairs Commission	1	0
Environment, Health, and Natural		
Resources, Department of	1	0
Division of Environmental Management	2	0
Board of Environment, Health, and		
Natural Resources	1	0
Soil and Water Conservation Commission	1	0
Wildlife Resources Commission	2	0
Revenue, Department of	5	1
Human Resources, Department of	3	0
Board of Human Resources	1	0
Health Services, Division of	3	0
Mental Health, Developmental		
Disabilities, and Substance Abuse Services,		
Division of	1	0
Social Services, Division of	3	0
Facilities Services, Division of	1	0
Youth Services, Division of	1	0
Hospitals and Institutions	1 ea.	0
Transportation, Department of	1	0
Board of Transportation	3	0
Motor Vehicles, Division of	1	0
Commerce, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control Commission,		
North Carolina	2	0
Banking Commission	2	0
Utilities Commission	8	1
Industrial Commission	7	0
Labor Force Development Council	1	0
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Department of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1
State Library	5	5
Publications Division	1	1
Crime Control and Public Safety,		
Department of	2	1
North Carolina Crime Commission	1	0
Adjutant General	2	0
Elections, State Board of	2	0
Office of Administrative Hearings	2	0

## Legislative Branch

State Senators	1 ea.	1 ea.
State Representatives	1 ea.	1 ea.
Principal Clerk -- Senate	1	1
Principal Clerk -- House	1	1
Reading Clerk -- Senate	1	1
Reading Clerk -- House	1	1
Sergeant at Arms -- House	1	1
Sergeant at Arms -- Senate	1	1
Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	35	15

## Judicial System

Justices of the Supreme Court	1 ea.	1 ea.
Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1
Administrative Office of the Courts	4	1

## Supreme Court Library

AS MANY AS REQUESTED

## Colleges and Universities

## The University of North Carolina System

Administrative Offices	3	0
University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1
University of North Carolina, Asheville	2	1
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1
East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1
North Carolina Agricultural and Technical University	2	1
North Carolina Central University	5	5
Western Carolina University	2	1
Pembroke State University	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5



Lenoir Rhyne College	1	1
Elon College	1	1
Guilford College	1	1
Campbell College <u>University</u>	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barber Scotia College	1	1
<del>Atlantic Christian</del> <u>Barton</u> College	1	1
Shaw University	1	1
St. Augustine's College	1	1
J.C. Smith University	1	1
Belmont Abbey College	1	1
Bennett College	1	1
Catawba College	1	1
Gardner-Webb College	1	1
Greensboro College	1	1
High Point College	1	1
Livingstone College	1	1
Mars Hill College	1	1
Meredith College	1	1
Methodist College	1	1
North Carolina Wesleyan College	1	1
Queens College	1	1
Sacred Heart College	1	1
St. Andrews Presbyterian College	1	1
Salem College	1	1
Warren Wilson College	1	1
County and Local Officials		
Clerks of the Superior Court	1 ea.	1 ea.
Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0
Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1
Secretary of Commerce	1	1
Secretary of the Treasury	1	0
Secretary of Health, Education and Welfare	1	0
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0
Bureau of Public Roads	1	0
Department of Justice	1	0
Department of Internal Revenue	1	0
Veterans' Administration	1	0

Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2
Federal Judges resident in North Carolina	1 ea.	0
Federal District Attorneys resident in North Carolina	1 ea.	0
Marshal of the United States Supreme Court	1	0
Federal Clerks of Court resident in North Carolina	1 ea.	0
Supreme Court Library exchange list	1 ea.	0

One copy of the Session Laws shall be furnished the head of any department of State government created in the future.

State agencies, institutions, etc., not found in or covered by this list may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled."

**Sec. 101.** G.S. 147-54 reads as rewritten:

"§ 147-54. *Printing, distribution and sale of the North Carolina Manual.*

The Secretary of State shall have printed biennially for distribution and sale, five thousand (5,000) copies of the North Carolina Manual, and shall make distribution to the State agencies, individuals, institutions and others as herein set forth.

#### NORTH CAROLINA STATE GOVERNMENT:

Members of the General Assembly	2 ea.
Officers of the General Assembly	1 ea.
Offices of the Clerk of each House of the General Assembly	1 ea.
Legislative Services Officer	1
Legislative Library	6
Members of the Council of State	2 ea.
Appointed Secretaries of Executive Departments	2 ea.
Personnel of the Department of the Secretary of State	1 ea.
State Board of Elections	2
Divisions of Archives and History, Director	1
Search Room	3
Publications Section	2
State Library	10
Libraries within State Agencies	1 ea.
Justices of the North Carolina Supreme Court	1 ea.
Judges of the North Carolina Court of Appeals	1 ea.
Judges of the North Carolina Superior Court	1 ea.
Supreme Court Library	12
Court of Appeals Library	2
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Reporter of the Supreme Court and Court of Appeals	1
Administrative Office of the Courts	5

#### NORTH CAROLINA EDUCATIONAL INSTITUTIONS:

## University of North Carolina System

General Administration Offices .....	12
Chancellors of the Constituent Institutions .....	1 ea.
University of North Carolina -- Chapel Hill Library .....	15
North Carolina State University Library .....	5
East Carolina University Library .....	5
North Carolina Central University Library .....	5
Appalachian State University Library .....	4
University of North Carolina -- Charlotte Library .....	4
University of North Carolina -- Greensboro Library .....	4
Western Carolina University Library .....	4
Other Constituent Institutions Libraries .....	3 ea.
North Carolina School of the Arts .....	2
Institute of Government .....	2
Community Colleges and Technical Institutes .....	2 ea.
Private Colleges and Universities	
Duke University Library .....	6
Wake Forest University .....	6
Campbell College University Library .....	5
Davidson College Library .....	4
All other Libraries of Senior and Junior Colleges .....	2 ea.
Public and Private Schools containing grades 8-12 .....	1 ea.

## COUNTY GOVERNMENT:

Clerks of Court .....	1 ea.
Registers of Deeds .....	1 ea.
Public Libraries of North Carolina .....	1 ea.

## FEDERAL GOVERNMENT:

President of the United States .....	1
North Carolina Members of the Presidential Cabinet .....	1 ea.
North Carolina Members of the United States Congress .....	2 ea.
Library of Congress .....	3
Resident Judges of the Federal Judiciary	
and United States Attorneys in North Carolina .....	1 ea.
Secretaries of State of the United States	
and Territories .....	1 ea.

After making the above distribution, the remainder shall be sold at the cost of publication plus tax and postage and the proceeds from such sales deposited with the State Treasurer for use by the Publications Division of the Secretary of State's Office to defray the expense of publishing the North Carolina Manual. Libraries and educational institutions not covered in the above distribution shall be entitled to a twenty percent (20%) discount on the cost of any purchase(s)."

**Sec. 103.** G.S. 158-8.1(b) reads as rewritten:

"(b) The Commission shall consist of 15 members appointed as follows:

- (1) Three members shall be appointed by the Governor;
- (2) Two members shall be appointed by the Lieutenant Governor;
- (3) Five members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. ~~120-121~~, 120-121; and

- (4) Five members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. ~~120-121~~; and 120-121."

**Sec. 104.** G.S. 158-8.1(c) reads as rewritten:

"(c) The appointing authority shall designate two of the initial appointees pursuant to ~~subsection~~ subdivision (b)(1), one of the initial appointees pursuant to ~~subsection~~ subdivision (b)(2), two of the initial appointees pursuant to ~~subsection~~ subdivision (b)(3), and two of the initial appointees pursuant to ~~subsection~~ subdivision (b)(4) to serve for terms ending June 30, 1995; the remainder of the initial appointees shall serve for terms ending June 30, 1997. Their successors shall serve for four-year terms ending on June 30 quadrennially thereafter.

Any appointment to fill a vacancy on the Commission shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be in accordance with G.S. 120-122."

**Sec. 105.** G.S. 158-8.1(e)(1) reads as rewritten:

- "(1) Survey Western North Carolina and determine the assets, liabilities, and resources that the region ~~contribute~~ contributes to the economic development process."

**Sec. 106.** G.S. 158-8.2(b) reads as rewritten:

"(b) The Commission shall consist of 17 members appointed as follows:

- (1) Five members shall be appointed by the Governor, including one developer of northeastern North Carolina, one banker, one county commissioner from Camden, Currituck, Pasquotank, or Perquimans Counties, or from the county or counties assigned to the Commission by the Department of Commerce as authorized by law, and one county commissioner from Beaufort, Bertie, Chowan, or Martin Counties, or from the county or counties assigned to the Commission by the Department of Commerce as authorized by law;
- (2) Five members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, including one developer of northeastern North Carolina, one banker, and one county commissioner from Dare, Hyde, Tyrrell, or Washington Counties;
- (3) Five members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, including one developer of northeastern North Carolina, one banker, and one county commissioner from Halifax, Hertford, Gates, or Northampton Counties;
- (4) The Secretary of Commerce or a designee; and
- (5) The Secretary of Environment, Health, and Natural Resources, or a designee.

Any person appointed to the Commission in a categorical appointment as a county commissioner may hold such office in addition to the offices permitted by ~~G.S.~~ G.S. 128-1.1."

**Sec. 107.** G.S. 158-8.2(c) reads as rewritten:

"(c) The appointing authority shall designate two of the initial appointees pursuant to ~~subsection~~ subdivision (b)(1), one of the initial appointees pursuant to ~~subsection~~ subdivision (b)(2), two of the initial appointees pursuant to ~~subsection~~ subdivision (b)(3), and two of the initial appointees pursuant to ~~subsection~~ subdivision (b)(4) to serve for terms ending June 30, 1995; the remainder of the initial appointees shall serve for terms ending June 30, 1997. Their successors shall serve for four-year terms ending on June 30 quadrennially thereafter."

**Sec. 108.** G.S. 158-8.2(f)(1)a. reads as rewritten:

"a. Survey northeastern North Carolina and determine the assets, liabilities, and resources that the region ~~contribute~~ contributes to the economic development process;"

**Sec. 109.** G.S. 158-8.2(g) reads as rewritten:

"(g) Within the limits of funds available, the Commission may hire and fix the compensation of any personnel necessary to its operations, contract with consultants for any services as it may require, and contract with the State of North Carolina or the federal government, or any agency or department thereof, for any services as may be provided by those agencies. The Commission may carry out the provisions of any contracts it may enter.

Within the limits of funds available, the Commission may lease, rent, or purchase, or otherwise obtain suitable quarters and office space for its staff, and may lease, rent, or purchase necessary furniture, fixtures, and other equipment."

**Sec. 110.** G.S. 158-8.3(b) reads as rewritten:

"(b) The Commission shall consist of 15 members appointed as follows:

- (1) Three members shall be appointed by the Governor;
- (2) Two members shall be appointed by the Lieutenant Governor;
- (3) Five members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121; and
- (4) Five members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. ~~120-121; and~~ 120-121."

**Sec. 111.** G.S. 158-8.3(c) reads as rewritten:

"(c) The appointing authority shall designate two of the initial appointees pursuant to ~~subsection~~ subdivision (b)(1) of this section, one of the initial appointees pursuant to ~~subsection~~ subdivision (b)(2) of this section, two of the initial appointees pursuant to ~~subsection~~ subdivision (b)(3) of this section, and two of the initial appointees pursuant to ~~subsection~~ subdivision (b)(4) of this section to serve for terms ending June 30, 1995; the remainder of the initial appointees shall serve for terms ending June 30, 1997. Their successors shall serve for four-year terms ending on June 30 quadrennially thereafter.

Any appointment to fill a vacancy on the Commission shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122."

**Sec. 112.** G.S. 160A-443(7) reads as rewritten:

"(7) If any occupant fails to comply with an order to vacate a dwelling, the public officer may file a civil action in the name of



the city to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the public officer produces a certified copy of an ordinance adopted by the governing body pursuant to subdivision (5) authorizing the officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the governing body has ordered the public officer to proceed to exercise his duties under subdivisions ~~4 and 5~~ (4) and (5) of this section to vacate and close or remove and demolish the dwelling."

**Sec. 113.** G.S. 162A-6(14a) reads as rewritten:

"(14a) To make special assessments against benefited property within the area served or to be served by the authority for the purpose of constructing, reconstructing, extending, or otherwise improving water systems or sanitary collection, treatment, and sewage disposal systems, in the same manner that a county may make special assessments under authority of Chapter 153A, Article 9, except that the language appearing in G.S. 153A-185 reading as follows: 'A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project,' shall not apply to assessments levied by Water and Sewer Authorities established pursuant to Chapter 162A, Article 1, of the General Statutes. For the purposes of this paragraph, references in Chapter 153A, Article 9, to the 'county,' the 'board of county commissioners,' 'the board' or a specific county official or employee are deemed to refer, respectively, to the authority and to the official or employee of the authority who performs most nearly the same duties performed by the specified county official or employee.

Assessment rolls after being confirmed shall be filed for registration in the office of the Register of Deeds of the county in which the property being assessed is located, and the term 'county tax collector' wherever used in G.S. 153A-195 and G.S. 153A-196, shall mean the Executive Director or other administrative officer designated by the authority to perform the functions described in said sections of the statute."

**Sec. 114.** G.S. 163-22(e) reads as rewritten:

"(e) The State Board of Elections shall determine, in the manner provided by law, the form and content of ballots, instruction sheets, pollbooks, ~~talley~~ tally sheets, abstract and return forms, certificates of election, and other forms to be used in primaries and elections. The Board shall furnish to the county and municipal boards of elections the registration application forms required pursuant to G.S. 163-67. The State Board of Elections shall direct the county boards of elections to purchase a sufficient quantity of all forms attendant to the registration and elections process. In addition, the State Board shall provide a source of supply from which the county boards of elections may purchase the quantity of pollbooks needed for the execution of its responsibilities. In the preparation of ballots, pollbooks, abstract and return forms, and all other forms, the State Board of Elections may call to its aid the Attorney General of the State, and it shall be the duty of the Attorney General to advise and aid in the preparation of these books, ballots and forms."

**Sec. 115.** G.S. 163-82.9 reads as rewritten:

"§ 163-82.9. *Cancellation of prior registration.*

If an applicant indicates on an application form described in G.S. 163-82.3 a current registration to vote in any other county, municipality, or ~~State, state,~~ the county board of elections, upon registering the person to vote, shall send a notice to the appropriate officials in the other county, municipality, or ~~State state~~ and shall ask them to cancel the person's voter registration there."

**Sec. 116.** G.S. 163-144 reads as rewritten:

"§ 163-144. *Lost, destroyed, damaged, and stolen ballots; replacement; report.*

Should official ballots furnished to any precinct in accordance with the provisions of this ~~chapter~~ Chapter be lost, destroyed, damaged, or stolen, the county board of elections, upon ascertaining that a shortage of ballots exists in the precinct, shall furnish the needed replacement ballots.

Within three days after the primary or election, the chief judge of the precinct in which the loss occurred shall make a written report, under oath, to the county board of elections describing in detail the circumstances of the loss, destruction, damage, or theft of the ballots."

**Sec. 117.** G.S. 163-227.2(d) reads as rewritten:

"(d) Only the chairman, member or supervisor of elections of the board shall keep the voter's application for absentee ballots and the sealed container-return envelope in a safe place, separate and apart from other applications and container-return envelopes. At the first meeting of the board pursuant to G.S. 163-230(2) held after receipt of the application and envelope, the chairman shall comply with the requirements of G.S. 163-

230(1) and G.S. 163-230(2)b. and c. If the voter's application for absentee ballots is approved by the board at that meeting, the application form and container-return envelope, with the ballots enclosed, shall be handled in the same manner and under the same provisions of law as applications and container-return envelopes received by the board under other provisions of this Article. If the voter's application for absentee ballots is disapproved by the board, the board shall so notify the voter stating the reason for disapproval by first-class mail addressed to the voter at his residence address or at the address shown in the application for absentee ballots; and the board chairman shall retain the container-return envelope in its unopened condition until the day of the primary or election to which it relates and on that day he shall destroy the container-return envelope and the ballots therein, without, however, revealing the manner in which the voter marked the ballots."

**Sec. 118.** G.S. 163-227.2(f) reads as rewritten:

"(f) Notwithstanding the exception specified in G.S. 163-119, G.S. 163-36, counties which operate a modified full-time office shall remain open five days each week during regular business hours consistent with daily hours presently observed by the county board of elections, commencing with the date prescribed in G.S. 163-227.2(b) and continuing until 5:00 P.M. on the Friday prior to that election or primary. The boards of county commissioners shall provide necessary funds for the additional operation of the office during such time."

**Sec. 119.** G.S. 164-14 reads as rewritten:

"§ 164-14. *Membership; appointments; terms; vacancies.*

(a) The Commission shall consist of 12 members, who shall be appointed as follows:

- (1) One member, by the president of the North Carolina State Bar;
- (2) One member, by the General Statutes Commission;
- (3) One member, by the dean of the school of law of the University of North Carolina;
- (4) One member, by the dean of the school of law of Duke University;
- (5) One member, by the dean of the school of law of Wake Forest University;
- (6) One member, by the Speaker of the House of Representatives of each General Assembly from the membership of the House;
- (7) One member, by the President Pro Tempore of the Senate of each General Assembly from the membership of the Senate;
- (8) Two members, by the Governor;
- (9) One member, by the dean of the school of law of North Carolina Central University;
- (10) One member by the president of the North Carolina Bar Association;
- (11) One member, by the dean of the school of law of Campbell College, University.

(b) Appointments of original members of the Commission made by the president of the North Carolina State Bar, the president of the North Carolina Bar Association, and the deans of the schools of law of Duke

University, the University of North Carolina, and Wake Forest University shall be for one year. Appointments of original members of the Commission made by the Speaker of the House of Representatives, the President of the Senate, and the Governor shall be for two years.

(c) After the appointment of the original members of the Commission, appointments by the president of the North Carolina State Bar, the General Statutes Commission, and the deans of the schools of law of North Carolina Central University, Duke University, the University of North Carolina, and Wake Forest University shall be made in the even-numbered years, and appointments made by the Speaker of the House of Representatives, the President Pro Tempore of the Senate, president of the North Carolina Bar Association, the dean of the School of Law of Campbell College University and the Governor shall be made in the odd-numbered years. Such appointments shall be made for two-year terms beginning June first of the year when such appointments are to become effective and expiring May 31 two years thereafter. All such appointments shall be made not later than May 31 of the year when such appointments are to become effective.

(d) If any appointment provided for by this section is not made prior to June first of the year when it should become effective, a vacancy shall exist with respect thereto, and the vacancy shall then be filled by appointment by the Governor. If any member of the Commission dies or resigns during the term for which he was appointed, his successor for the unexpired term shall be appointed by the person who made the original appointment, as provided in G.S. 164-14, or by the successor of such person; and if such vacancy is not filled within 30 days after the vacancy occurs, it shall then be filled by appointment by the Governor. In any case where an appointment authorized to be made by G.S. 164-14(c) has not been made on or before July 31 of the year in which it was due to be made, a vacancy shall exist with respect to that appointment and the General Statutes Commission at its next meeting shall by majority vote fill the vacancy by appointment.

(e) All appointments shall be reported to the secretary of the Commission.

(f) Notwithstanding the expiration of the term of the appointment, the terms of members of the General Statutes Commission shall continue until the appointment of a successor has been made and reported to the secretary of the Commission."

**Sec. 120.** G.S. 166A-1 reads as rewritten:

"§ 166A-1. *Short title.*

This ~~Chapter~~ Article may be cited as 'North Carolina Emergency Management Act of 1977.'"

**Sec. 121.** G.S. 166A-2 reads as rewritten:

"§ 166A-2. *Purposes.*

The purposes of this ~~Chapter~~ Article are to set forth the authority and responsibility of the Governor, State agencies, and local governments in prevention of, preparation for, response to and recovery from natural or man-made disasters or hostile military or paramilitary action and to:

- (1) Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property;



- (2) Prepare for prompt and efficient rescue, care and treatment of threatened or affected persons;
- (3) Provide for the rapid and orderly rehabilitation of persons and restoration of property; and
- (4) Provide for cooperation and coordination of activities relating to emergency and disaster mitigation, preparedness, response and recovery among agencies and officials of this State and with similar agencies and officials of other states, with local and federal governments, with interstate organizations and with other private and quasi-official organizations."

**Sec. 122.** G.S. 166A-3 reads as rewritten:

"§ 166A-3. *Limitations.*

Nothing in this ~~Chapter~~ Article shall be construed to:

- (1) Interfere with dissemination of news or comment on public affairs; but any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be requested to transmit or print public service messages furnishing information or instructions in connection with an emergency, disaster or war; or
- (2) Limit, modify or abridge the authority of the Governor to proclaim martial law or exercise any other powers vested in him under the Constitution, statutes, or common law of this State independent of, or in conjunction with, any provisions of this ~~Chapter~~ Article."

**Sec. 123.** G.S. 166A-4 reads as rewritten:

"§ 166A-4. *Definitions.*

The following ~~words and phrases as used in this Chapter shall have the following meanings:~~ definitions apply in this Article:

- (1) 'Emergency Management.' -- Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type disaster, which include the never-ending preparedness cycle of prevention, mitigation, warning, movement, shelter, emergency assistance and recovery.
- (2) 'Emergency Management Agency.' -- A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.
- (3) 'Disaster.' -- An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military or paramilitary cause.
- (4) 'Political Subdivision.' -- Counties and incorporated cities, towns and villages."

**Sec. 124.** G.S. 166A-5 reads as rewritten:

"§ 166A-5. *State emergency management.*

The State emergency management program includes all aspects of preparations for, response to and recovery from war or peacetime disasters.

- (1) Governor. -- The Governor shall have general direction and control of the State emergency management program and shall be responsible for carrying out the provisions of this ~~Chapter~~ Article.
  - a. The Governor is authorized and empowered:



1. To make, amend or rescind the necessary orders, rules and regulations within the limits of the authority conferred upon him herein, with due consideration of the policies of the federal government.
  2. To delegate any authority vested in him under this Chapter Article and to provide for the subdelegation of any such authority.
  3. To cooperate and coordinate with the President and the heads of the departments and agencies of the federal government, and with other appropriate federal officers and agencies, and with the officers and agencies of other states and local units of government in matters pertaining to the emergency management of the State and nation.
  4. To enter into agreements with the American National Red Cross, Salvation Army, Mennonite Disaster Service and other disaster relief organizations.
  5. To make, amend, or rescind mutual aid agreements in accordance with G.S. 166A-10.
  6. To utilize the services, equipment, supplies and facilities of existing departments, offices and agencies of the State and of the political subdivisions thereof. The officers and personnel of all such departments, offices and agencies are required to cooperate with and extend such services and facilities to the Governor upon request. This authority shall extend to a state of disaster, imminent threat of disaster or emergency management planning and training purposes.
  7. To agree, when required to obtain federal assistance in debris removal, that the State will indemnify the federal government against any claim arising from the removal.
  8. To sell, lend, lease, give, transfer or deliver materials or perform services for disaster purposes on such terms and conditions as may be prescribed by any existing law, and to account to the State Treasurer for any funds received for such property.
- b. In the threat of or event of a disaster, or when requested by the governing body of any political subdivision in the State, the Governor may assume operational control over all or any part of the emergency management functions within this State.
- (2) Secretary of Crime Control and Public Safety. -- The Secretary of Crime Control and Public Safety shall be responsible to the Governor for State emergency management activities and shall have:
- a. The power, as delegated by the Governor, to activate the State and local plans applicable to the areas in question and he shall be empowered to authorize and direct the deployment and use of any personnel and forces to which the plan or plans apply, and the use or distribution of any supplies,

- equipment, materials and facilities available pursuant to this ~~Chapter~~ Article or any other provision of law.
- b. Additional authority, duties, and responsibilities as may be prescribed by the Governor, and he may subdelegate his authority to the appropriate member of his department.
- (3) Functions of State Emergency Management. -- The functions of the State emergency management program include:
- a. Coordination of the activities of all agencies for emergency management within the State, including planning, organizing, staffing, equipping, training, testing, and the activation of emergency management programs.
  - b. Preparation and maintenance of State plans for man-made or natural disasters. The State plans or any parts thereof may be incorporated into department regulations and into executive orders of the Governor.
  - c. Promulgation of standards and requirements for local plans and programs, determination of eligibility for State financial assistance provided for in G.S. 166A-7 and provision of technical assistance to local governments.
  - d. Development and presentation of training programs and public information programs to insure the furnishing of adequately trained personnel and an informed public in time of need.
  - e. Making of such studies and surveys of the resources in this State as may be necessary to ascertain the capabilities of the State for emergency management, maintaining data on these resources, and planning for the most efficient use thereof.
  - f. Coordination of the use of any private facilities, services, and property.
  - g. Preparation for issuance by the Governor of executive orders, proclamations, and regulations as necessary or ~~appropriate~~ and appropriate.
  - h. Cooperation and maintenance of liaison with the other states, federal government and any public or private agency or entity in achieving any purpose of this ~~Chapter~~ Article and in implementing programs for emergency, disaster or war prevention, preparation, response, and recovery.
  - i. Making recommendations, as appropriate, for zoning, building and other land-use controls, and safety measures for securing mobile homes or other nonpermanent or semipermanent works designed to protect against or mitigate the effects of a disaster.
  - j. Coordination of the use of existing means of communications and supplementing communications resources and integrating them into a comprehensive State or State-federal telecommunications or other communications system or network."

**Sec. 125.** G.S. 166A-6(b) reads as rewritten:

"(b) In addition to any other powers conferred upon the Governor by law, during the state of disaster, he shall have the following:

- (1) To utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services;
- (2) To take such action and give such directions to State and local law-enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Chapter Article and with the orders, rules and regulations made pursuant thereto;
- (3) To take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety;
- (4) Subject to the provisions of the State Constitution to relieve any public official having administrative responsibilities under this Chapter Article of such responsibilities for willful failure to obey an order, rule or regulation adopted pursuant to this Chapter Article."

**Sec. 126.** G.S. 166A-7(c) reads as rewritten:

"(c) Each county and incorporated municipality in this State is authorized to make appropriations for the purposes of this Chapter Article and to fund them by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues, whose use is not otherwise restricted by law."

**Sec. 127.** G.S. 166A-7(d) reads as rewritten:

"(d) In carrying out the provisions of this Chapter Article each political subdivision is authorized:

- (1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for emergency management purposes and to provide for the health and safety of persons and property, including emergency assistance, consistent with this Chapter Article;
- (2) To direct and coordinate the development of emergency management plans and programs in accordance with the policies and standards set by the State;
- (3) To assign and make available all available resources for emergency management purposes for service within or outside of the physical limits of the subdivision; and
- (4) To delegate powers in a local state of emergency under G.S. 166A-8 to an appropriate official."

**Sec. 128.** G.S. 166A-12 reads as rewritten:

"§ 166A-12. *Nondiscrimination in emergency management.*

State and local governmental bodies and other organizations and personnel who carry out emergency management functions under the provisions of this Chapter Article are required to do so in an equitable and impartial manner. Such State and local governmental bodies, organizations and personnel shall not discriminate on the grounds of race, color, religion, nationality, sex, age

or economic status in the distribution of supplies, the processing of applications and other relief and assistance activities."

**Sec. 129.** G.S. 166A-13 reads as rewritten:

"§ 166A-13. *Emergency management personnel.*

(a) No person shall be employed or associated in any capacity in any emergency management agency established under this ~~Chapter~~ Article if that person:

- (1) Advocates or has advocated a change by force or violence in the constitutional form of the Government of the United States or in this State;
- (2) Advocates or has advocated the overthrow of any government in the United States by force or violence;
- (3) Has been convicted of any subversive act against the United States;
- (4) Is under indictment or information charging any subversive act against the United States; or
- (5) Has ever been a member of the Communist Party.

Each person who is appointed to serve in any emergency management agency shall, before entering upon his duties, take a written oath before a person authorized to administer oaths in this State, which oath shall be substantially as follows:

'I, ....., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of North Carolina, against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate, nor am I, nor have I ever knowingly been, a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence; and that during such time as I am a member of the State Emergency Management Agency I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence, so help me God.'

(b) No position created by or pursuant to this ~~Chapter~~ Article shall be deemed an office within the meaning of Article 6, Section 9 of the Constitution of North Carolina."

**Sec. 130.** G.S. 166A-14(a) reads as rewritten:

"(a) All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker complying with or reasonably attempting to comply with this ~~Chapter~~ Article or any order, rule or regulation promulgated pursuant to the provisions of this ~~Chapter~~ Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity."

**Sec. 131.** G.S. 166A-14(b) reads as rewritten:



"(b) The rights of any person to receive benefits to which he would otherwise be entitled under this ~~Chapter~~ Article or under the Workers' Compensation Law or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of emergency management functions."

**Sec. 132.** G.S. 166A-16 reads as rewritten:

"§ 166A-16. *Severability.*

If any provision of this ~~Chapter~~ Article or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the ~~Chapter~~ Article which can be given effect without the invalid provision or application, and to this end the provisions of this ~~Chapter~~ Article are severable."

**Sec. 133.** Section 3 of Chapter 514 of the 1993 Session Laws is repealed.

**Sec. 133.1.** Section 8 of Chapter 538 of the 1993 Session Laws is repealed.

**Sec. 134.** The introductory language of Section 1 of Chapter 630 of the 1993 Session Laws reads as rewritten:

"Section 1. Section 42 of Chapter 1281 of the Session Laws of 1957, as amended by Chapter 934 of the Session Laws of 1959, Chapter 1111 of the Session Laws of 1961, Chapter 693 of the Session Laws of 1965, Chapter 324 of the Session Laws of 1969, Chapter 785 of the Session Laws of 1971, and Section 4 of Chapter 1168 of the Session Laws of 1981 reads as rewritten:"

**Sec. 135.** Section 4 of Chapter 646 of the 1993 Session Laws reads as rewritten:

"Sec. 4. *Charter.* Any action by the City of Gastonia under this act to dissolve the GAA also repeals Section 9.3 of the Charter of the City of Gastonia, being Chapter 557 of the 1991 Session ~~Laws, is repealed, Laws.~~"

**Sec. 135.1.** (a) The introductory language of Section 2 of Chapter 110 of the 1995 Session Laws reads as rewritten:

"Sec. 2. Section 4 of Chapter 869 of the ~~1986~~ 1985 Session Laws reads as rewritten:"

(b) The introductory language of Section 4 of Chapter 163 of the 1995 Session Laws reads as rewritten:

"Sec. 4. G.S. ~~20-118(b)(12)~~ 20-118(c)(12) reads as rewritten:"

(c) Section 1 of Chapter 186 of the 1995 Session Laws is repealed.

(d) Section 2 of Chapter 197 of the 1995 Session Laws reads as rewritten:

"Sec. 2. Notwithstanding the provisions of G.S. 163-155, if a direct record voting system is approved by the State Board of Elections under the provisions of G.S. 163-160 for use by a county, that county's board of elections may require, according to rules which shall be adopted by the State Board of ~~Election, Elections,~~ that paper ballots used in curbside voting under G.S. 163-155 be transported to the county board of elections to be counted centrally rather than at the voting place."

(e) G.S. 1A-1, Rule 4(c) reads as rewritten:

"(c) Summons -- Return. -- Personal service or substituted personal service of summons as prescribed by Rule 4(j)(1) a and b, must be made



within 30 days after the date of the issuance of summons, except that in tax and assessment foreclosures under G.S. 47-108.25 or G.S. ~~105-414~~ 105-374 the time allowed for service is 60 days. When a summons has been served upon every party named in the summons, it shall be returned immediately to the clerk who issued it, with notation thereon of its service.

Failure to make service within the time allowed or failure to return a summons to the clerk after it has been served on every party named in the summons shall not invalidate the summons. If the summons is not served within the time allowed upon every party named in the summons, it shall be returned immediately upon the expiration of such time by the officer to the clerk of the court who issued it with notation thereon of its nonservice and the reasons therefor as to every such party not served, but failure to comply with this requirement shall not invalidate the summons."

(f) G.S. 1A-1, Rule 4(d) reads as rewritten:

"(d) Summons -- Extension: endorsement, alias and pluries. -- When any defendant in a civil action is not served within the time allowed for service, the action may be continued in existence as to such defendant by either of the following methods of extension:

- (1) The plaintiff may secure an endorsement upon the original summons for an extension of time within which to complete service of process. Return of the summons so endorsed shall be in the same manner as the original process. Such endorsement may be secured within 90 days after the issuance of summons or the date of the last prior endorsement, or
- (2) The plaintiff may sue out an alias or pluries summons returnable in the same manner as the original process. Such alias or pluries summons may be sued out at any time within 90 days after the date of issue of the last preceding summons in the chain of summonses or within 90 days of the last prior endorsement.

Provided, in tax and assessment foreclosures under G.S. ~~105-391~~ 47-108.25 and G.S. ~~105-414~~ 105-374, the first endorsement may be made at any time within two years after the issuance of the original summons, and subsequent endorsements may thereafter be made as in other actions; or an alias or pluries summons may be sued out at any time within two years after the issuance of the original summons, and after the issuance of such alias or pluries summons, the chain of summonses may be kept up as in any other action.

Provided, further, the methods of extension may be used interchangeably in any case and regardless of the form of the preceding extension."

(g) G.S. 45-21.16(f) reads as rewritten:

"(f) Waiver of the right to notice and hearing provided herein shall not be permitted except as set forth herein. In any case in which the original principal amount of indebtedness secured was one hundred thousand dollars (\$100,000), or more, any person entitled to notice and hearing may waive after default the right to notice and hearing by written instrument signed and duly acknowledged by such party. In all other cases, at any time subsequent to service of the notice of hearing provided above, the clerk, upon the request of the mortgagee or trustee, shall mail to all other parties entitled to notice of such hearing a form by which such parties may waive their rights

to the hearing. Upon the return of the forms to the clerk bearing the signatures of each such party and that of a witness to each such party's signature (which witness shall not be an agent or employee of the mortgagee or trustee), the clerk in his discretion may dispense with the necessity of a hearing and proceed to issue the order authorizing sale as set forth above."

(h) G.S. 47C-1-102 reads as rewritten:

"(a) This chapter applies to all condominiums created within this State after October 1, 1986. Sections 47C-1-105 (Separate Titles and Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws), 47C-2-104 (Description of Units), 47C-3-102(a)(1) through (6) and (11) through (16) (Powers of Unit Owners' Association), 47C-3-107A (Charges for Late Payment, Fines), 47C-3-111 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), and 47C-4-117 (Effect of Violation on Rights of Action; Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this State on or before October 1, 1986; but those sections apply only with respect to events and circumstances occurring after October 1, 1986 and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums.

(b) The provisions of Chapter 47A, the Unit Ownership Act, do not apply to condominiums created after October 1, 1986 and do not invalidate any amendment to the declaration, bylaws, and plats and plans of any condominium created on or before October 1, 1986 if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by Chapter 47A, the Unit Ownership Act. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(c) This chapter does not apply to condominiums or units located outside this State, but the public offering statement provisions (G.S. 47C-4-102 through 47C-4-108) apply to all contracts for the dispositions thereof signed in this State by any party unless exempt under G.S. 47C-4-101(b)."

(i) G.S. 65-47 reads as rewritten:

"(a) The provisions of this Article shall apply to all persons engaged in the business of operating a cemetery as defined herein, except cemeteries owned and operated by governmental agencies or churches.

(b) Any cemetery beneficially owned and operated by a fraternal organization or its corporate agent for at least 50 years prior to September 1, 1975, shall be exempt from the provisions of Article 9 of this Chapter.

(c) The provisions of this Article shall not apply to persons licensed under ~~G.S. 65-36.1 through 65-36.8 when performing services or selling items for which a license is required under G.S. 65-36.1 through 65-36.8~~ Article 13D of Chapter 90 of the General Statutes when engaging in activities for which a license is required under the Article."

(j) G.S. 65-66(a) reads as rewritten:

"(a) It shall be deemed contrary to public policy if any person or legal entity receives, holds, controls or manages funds or proceeds received from the sale of, or from a contract to sell, personal property or services which may be used in a cemetery in connection with the burial of or the commemoration of the memory of a deceased human being, where payments for the same are made either outright or on an installment basis prior to the demise of the person or persons so purchasing them or for whom they are so purchased, unless such person or legal entity holds, controls or manages said funds, subject to the limitations and regulations prescribed in this section. This section shall apply to all cemetery companies or other legal entities that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of, or the commemoration of the memory of, a deceased human being, but shall exclude persons holding a certificate license under G.S. 90-210.30 through 90-210.37 Article 13D of Chapter 90 of the General Statutes."

(k) G.S. 65-66(k) reads as rewritten:

"(k) ~~Nothing in G.S. 65-66 and subsections thereunder this section shall apply to persons or legal entities holding licenses or certificates under G.S. 90-210.30 through 90-210.37 when performing services or selling items authorized by said sections under Article 13D of Chapter 90 of the General Statutes when engaging in activities for which a license is required under that Article."~~

(l) G.S. 131E-23(a)(36) reads as rewritten:

"(36) To sell a hospital facility pursuant to G.S. 131E-8 or G.S. 131E-13; and".

**Sec. 135.2.** (a) Effective January 1, 1996, G.S. 28A-28-2(a)(6), as enacted by Section 1 of Chapter 294 of the 1995 Session Laws, reads as rewritten:

"(6) A description of the nature of the decedent's personal property and the location of such property, as far as these facts are known or can with reasonable diligence by be ascertained;"

(b) Effective October 1, 1995, G.S. 50-16.3A(a), as enacted by Section 2 of Chapter 319 of the 1995 Session Laws, reads as rewritten:

"(a) Entitlement. -- In an action brought pursuant to Chapter 50 of the General Statutes, either party may move for alimony. The court shall award alimony to the dependent spouse upon a finding that one spouse is a dependent spouse, that the other spouse is a supporting spouse, and that an award of alimony is equitable after considering all relevant factors, including those set out in subsection (b) of this section. If the court finds that the dependent spouse participated in an act of illicit sexual behavior, as defined in G.S. 50-16.1A(3)a., during the marriage and prior to or on the date of separation, the court shall not award alimony. If the court finds that the supporting spouse participated in an act of illicit sexual behavior, as defined in G.S. 50-16.1A(3)a., during the marriage and prior to or on the date of separation, then the court shall order that alimony be paid, paid to a dependent spouse. If the court finds that the dependent and the supporting spouse each participated in an act of illicit sexual behavior during the marriage and prior to or on the date of separation, then alimony shall be denied or awarded in the discretion of the court after consideration of all of

the circumstances. Any act of illicit sexual behavior by either party that has been ~~condone~~ condoned by the other party shall not be considered by the court.

The claim for alimony may be heard on the merits prior to the entry of a judgment for equitable distribution, and if awarded, the issues of amount and of whether a spouse is a dependent or supporting spouse may be reviewed by the court after the conclusion of the equitable distribution claim."

(c) G.S. 162A-4(a), as amended by Section 2 of Chapter 207 of the 1995 Session Laws, reads as rewritten:

"(a) Whenever an authority has been organized under the provisions of this Chapter, any political subdivision may withdraw therefrom at any time prior to the creation of any obligations by the authority, and any political subdivision not having joined in the original organization may, with the consent of the authority, join the authority; provided, that any political subdivision not having joined the original organization shall have the right upon reasonable terms and conditions, whether the authority shall consent thereto or not, to join the authority if the authority's water system or sewer system, or any part thereof is situated within the boundaries of the political subdivision or of the county within which the political subdivision is located; provided, further, that any political subdivision authorized to join the authority by ~~G.S. 153A-5.1~~ G.S. 162A-5.1 may do so without the consent of the authority."

(d) Section 1 of Chapter 285 of the 1995 Session Laws is amended by adding a quotation at the end of the section.

(e) Effective July 1, 1995, G.S. 87-43.2(a)(4) reads as rewritten:

"(4) The applicant furnishes, upon the initial application for a license, a bonding ability statement completed by a bonding company licensed to do business in North Carolina, verifying the applicant's ability to furnish performance bonds for electrical contracting projects having a value in excess of ~~seventeen thousand five hundred dollars (\$17,500)~~ twenty-five thousand dollars (\$25,000) for the intermediate license classification and in excess of ~~seventy-five thousand dollars (\$75,000)~~ for the unlimited license classification. In lieu of furnishing the bonding ability statement, the applicant may submit for evaluation and specific approval of the Board other information certifying the adequacy of the applicant's financial ability to engage in projects of the license classification applied for. The bonding ability statement or other financial information must be submitted in the same name as the license to be issued. If the firm for which a license application is filed is owned by a sole proprietor, the bonding ability statement or other financial information may be furnished in either the firm name or the name of the proprietor. However, if the application is submitted in the name of a sole proprietor, the applicant shall submit information verifying that the person in whose name the application is made is in fact the sole proprietor of the firm."

(f) G.S. 101-2 reads as rewritten:



*"§ 101-2. Procedure for changing name: petition; notice.*

A person who wishes, for good cause shown, to change his name must file his application before the clerk of the superior court of the county in which he lives, having first given 10 days' notice of the application by publication at the courthouse door.

Applications to change the name of minor children may be filed by their parent or parents or guardian or next friend of such minor children, and such applications may be joined in the application for a change of name filed by their parent or parents: Provided nothing herein shall be construed to permit one parent to make such application on behalf of a minor child without the consent of the other parent of such minor child if both parents be living, except that a minor who has reached the age of 16 years, upon proper application to the clerk may change his or her name, with the consent of the parent who has custody of the minor and has supported the minor, without the necessity of obtaining the consent of the other parent, when the clerk of court is satisfied that the other parent has abandoned the minor. Provided, further, that a change of parentage or the addition of information relating to parentage on the birth certificate of any person shall be made pursuant to G.S. 130-60, 130A-118.

Notwithstanding any other provisions of this section, the consent of a parent who has abandoned a minor child shall not be required if there is filed with the clerk a copy of an order of a court of competent jurisdiction adjudicating that such parent has abandoned such minor child. In the event that a court of competent jurisdiction has not therefore declared the minor child to be an abandoned child, then on written notice of not less than 10 days to the parent alleged to have abandoned the child, by registered or certified mail directed to such parent's last known address, the clerk of superior court is hereby authorized to determine whether an abandonment has taken place. If said parent denies that an abandonment has taken place, this issue of fact shall be determined as provided in G.S. 1-273, and if abandonment is determined, then the consent of said parent shall not be required. Upon final determination of this issue of fact the proceeding shall be transferred back to the special proceedings docket for further action by the clerk."

(g) Section 4.1 of Chapter 360 of the 1995 Session Laws became effective upon ratification of that act.

(h) G.S. 120-2.1, as enacted by Section 1 of Chapter 355 of the 1995 Session Laws, is recodified as G.S. 120-2.2.

(i) Effective July 1, 1996, G.S. 20-85(b), as amended by Section 2 of Chapter 50 of the 1995 Session Laws, reads as rewritten:

~~"(b) Thirty-one dollars and fifty cents (\$31.50) of each title fee collected under subdivision (a)(1) of this section and all of the~~ The fees collected under subdivisions ~~(a)(2)~~ (a)(1) through (a)(9) of this section shall be credited to the North Carolina Highway Trust Fund. ~~The remaining three dollars and fifty cents (\$3.50) of the title fee collected under subdivision (a)(1) of this section and the fees collected under subdivision (a)(10) of this section shall be credited to the Highway Fund. Fifteen dollars (\$15.00) of each title fee credited to the Trust Fund under subdivision (a)(1) shall be~~



added to the amount allocated for secondary roads under G.S. 136-176 and used in accordance with G.S. 136-44.5."

(j) Section 34 of Chapter 390 of the 1995 Session Laws is repealed.

(k) Effective October 1, 1995, G.S. 143-129.4 reads as rewritten:

"§ 143-129.4. *Guaranteed energy savings contracts.*

The solicitation and evaluation of proposals for guaranteed energy savings contracts, as defined in Part 2 of Article 3B of this Chapter, and the letting of contracts for these proposals are governed solely by the provisions of that Part; except that guaranteed energy savings contracts are subject to the requirements of G.S. ~~143-128(c), 143-128(f).~~"

(l) As G.S. 132-10 enacted by Section 5 of Chapter 388 of the 1995 Session Laws covers the same subject matter, effective October 1, 1995, Chapter 285 of the 1991 Session Laws and Chapter 82 of the 1993 Session Laws are repealed.

(m) Section 6 of Chapter 232 of the 1995 Session Laws reads as rewritten:

"Sec. 6. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Commercial Code, Revised Article 3 and conforming and miscellaneous amendments to Articles 1 and 4, and all explanatory comments of the drafters of this act, as the Revisor deems appropriate."

(n) Effective October 1, 1995, Section 7 of Chapter 331 of the 1995 Session Laws reads as rewritten:

"Sec. 7. Article 2A of Chapter 32A as set out in Section 3 5 of this act is intended as a codification of the existing North Carolina common law."

(o) G.S. 90-21.11 reads as rewritten:

"§ 90-21.11. *Definitions.*

As used in this Article, the term 'health care provider' means without limitation any person who pursuant to the provisions of Chapter 90 of the General Statutes is licensed, or is otherwise registered or certified to engage in the practice of or otherwise performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, psychology; or a hospital ~~as defined by G.S. 131-126.1(3); or a nursing home as defined by G.S. 130-9(e)(2);~~ home; or any other person who is legally responsible for the negligence of such person, hospital or nursing home; or any other person acting at the direction or under the supervision of any of the foregoing persons, hospital, or nursing home.

As used in this Article, the term 'medical malpractice action' means a civil action for damages for personal injury or death arising out of the furnishing or failure to furnish professional services in the performance of medical, dental, or other health care by a health care provider."

(p) G.S. 143-318.10(c) reads as rewritten:

"(c) 'Public body' does not include (1) a meeting solely among the professional staff of a public body, or (2) the medical staff of a public hospital, hospital or the medical staff of a hospital that has been sold or conveyed pursuant to G.S. 131E-8."

(q) G.S. 131E-97.1(a) reads as rewritten:

"(a) Except as provided in subsection (b) of this section, the personnel files of employees or former employees, and the files of applicants for employment maintained by a public hospital as defined in G.S. 159-39 or maintained by a hospital that has been sold or conveyed pursuant to G.S. 131E-8 are not public records as defined by Chapter 132 of the General Statutes."

(r) G.S. 131E-97.2 reads as rewritten:

"§ 131E-97.2. *Confidentiality of credentialing information.*

Information acquired by a public hospital, as defined in G.S. 159-39, a hospital that has been sold or conveyed pursuant to G.S. 131E-8, or by a State-owned or State-operated hospital, or by persons acting for or on behalf of a hospital, in connection with the credentialing and peer review of persons having or applying for privileges to practice in the hospital is confidential and is not a public record under Chapter 132 of the General Statutes; provided that information otherwise available to the public shall not become confidential merely because it was acquired by the hospital or by persons acting for or on behalf of the hospital."

(s) G.S. 90-368(8) reads as rewritten:

"(8) Employees or independent contractors of a hospital or health care facility licensed under Article 5 or Part A of Article 6 of Chapter 131E or Article 2 of Chapter 122C of the General Statutes."

(t) Effective October 1, 1995, G.S. 55-7-44(d) as enacted by Chapter 149 of the 1995 Session Laws reads as rewritten:

"(d) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing that the requirements of subsection (a) of this section have not been met. Defendants may make a motion to dismiss a complaint under subsection (a) of this section for failure to comply with this subsection. Prior to the court's ruling on such a motion to dismiss for failure to comply with this subsection, dismiss, the plaintiff shall be entitled to discovery only with respect to the issues presented by the motion and only if and to the extent that the plaintiff has alleged such facts with particularity. The preliminary discovery shall be limited solely to matters germane and necessary to support the facts alleged with particularity relating solely to the requirements of subsection (a) of this section."

**Sec. 135.3.** (a) G.S. 65-60.1(e) reads as rewritten:

"(e) Any trustee shall invest and reinvest cemetery trust funds in the same manner as provided by law for the investment of trust funds by the clerk of the superior court, court; provided, however, that cemetery trust funds held in a fund designated as Trust Fund 'A' pursuant to G.S. 65-64(e) may be invested and reinvested in accordance with G.S. 36A-2."

(b) G.S. 65-64(a) reads as rewritten:

"(a) Deposits to the care and maintenance trust fund must be made by the cemetery company holding title to the subject cemetery lands on or before the last day of the calendar month following the calendar month in which final payment is received as provided herein; however the entire amount required to be deposited into the fund shall be paid within four years from the date of any contract requiring such payment regardless of whether

all amounts have been received by the cemetery company. If the cemetery company fails to make timely deposit, the Commission may levy and collect a penalty of one dollar (\$1.00) per day for each day the deposit is delinquent on each grave space, niche or mausoleum crypt sold. The care and maintenance trust fund shall be invested and reinvested by the trustee in the same manner as provided by law for the investment of other trust funds by the clerk of the superior court except that such investments may be made through means of a common trust fund as described in G.S. 36-47, G.S. 36A-90; provided, further, that cemetery trust funds held in a fund designated as Trust Fund 'A' pursuant to G.S. 65-64(e) may be invested and reinvested in accordance with G.S. 36A-2. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the said net income is not sufficient to pay such fees and other expenses, the same shall be paid by the cemetery company."

(c) G.S. 65-64(e) reads as rewritten:

"(e) When the amount deposited in the perpetual care fund required by this Article of any cemetery company shall amount to one hundred fifty thousand dollars (\$150,000), anything in this Article to the contrary notwithstanding, the cemetery company may make all deposits thereafter either into the original perpetual care trust fund or into a separate fund established as an irrevocable trust, designated as Perpetual Care Trust Fund 'A,' and invested by the ~~trustee~~ trustee, in accordance with G.S. 36A-2, as directed by the cemetery company. Funds in a trust fund designated as Trust Fund 'A' may not be invested in another cemetery company and are subject to the requirements of funds deposited in the original perpetual care trust fund, company."

(d) G.S. 14-415.12(b), as enacted in Chapter 398 of the 1995 Session Laws, reads as rewritten:

"(b) The sheriff shall deny a permit to an applicant who:

- (1) Is ineligible to own, possess, or receive a firearm under the provisions of State or federal law.
- (2) ~~Has formal charges pending~~ Is under indictment or against whom a finding of probable cause exists for a crime punishable by imprisonment for a term exceeding sixty days, felony.
- (3) Has been adjudicated guilty in any court of a crime punishable by imprisonment for a term exceeding sixty days, felony.
- (4) Is a fugitive from justice.
- (5) Is an unlawful user of, or addicted to marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. § 802.
- (6) Is currently, or has been previously adjudicated or administratively determined to be, lacking mental capacity or mentally ill.
- (7) Is or has been discharged from the armed forces under conditions other than honorable.
- (8) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not

limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 14-277.2, 14-277.3, 14-281.1, 14-283, 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, 14-288.12, 14-288.13, 14-288.14, 14-318.2, or ~~14-415.19(a), unless five years has elapsed since disposition or pardon has occurred prior to the date on which the application is submitted, 14-415.21(b).~~

- (9) Has had entry of a prayer for judgment continued for a criminal offense which would disqualify the person from obtaining a concealed handgun permit.
- (10) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime which would disqualify him from obtaining a concealed handgun permit.
- (11) Has been convicted of an impaired driving offense under G.S. 20-138.1, 20-138.2, or 20-138.3 within three years prior to the date on which the application is submitted."

(e) G.S. 14-415.11(c), as enacted by Chapter 398 of the 1995 Session Laws, reads as rewritten:

"(c) A permit does not authorize a person to carry a concealed handgun in the areas prohibited by G.S. 14-269.2, 14-269.3, 14-269.4, and 14-277.2, in an area prohibited by rule adopted under G.S. 120-32.1, in any area prohibited by 18 U.S.C. § 922 or any other federal law, in a law enforcement or correctional facility, in a building housing only State or federal offices, in an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government, a financial institution, or any other premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises. It shall be unlawful for a person, with or without a permit, to carry a concealed handgun while consuming alcohol or at any time while the person has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in his blood was lawfully obtained and taken in therapeutically appropriate amounts."

(f) G.S. 50-16.6, as amended by Chapter 319 of the 1995 Session Laws, reads as rewritten:

"§ 50-16.6. *When alimony, postseparation support, counsel fees not payable.*

Alimony, postseparation support, and counsel fees may be barred by an express provision of a valid separation agreement or premarital agreement so long as the agreement is ~~performed, by Chapter 31A of the General Statutes, or by a judgment pursuant to G.S. 50-11 or G.S. 50-19 performed.~~

(g) Subsection (f) of this section becomes effective October 1, 1995, and applies to civil actions filed on or after that date. Subsection (f) shall not apply to pending litigation, or to future motions in the cause seeking to modify orders or judgments in effect on October 1, 1995. Subsections (d) and (e) of this section become effective December 1, 1995.



**Sec. 136.** Except as otherwise provided, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 693

## CHAPTER 510

### AN ACT TO MAKE TECHNICAL AMENDMENTS TO IMPROVE THE ADMINISTRATION OF THE PROPERTY TAX ON MOTOR VEHICLES.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 105-330.2 reads as rewritten:

"§ 105-330.2. *Appraisal, ownership, and situs.*

(a) The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall be determined annually as of January 1 preceding the date a new registration is applied for or the current registration is ~~renewed~~, expires. If the value of a new motor vehicle cannot be determined as of January 1 preceding the date the new registration is applied for, the value of that vehicle shall be determined for that year as of the date that model vehicle is first offered for sale at retail in this State. The ownership, situs, and taxability of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall be determined annually as of the day on which a new registration is applied for or the day on which the current vehicle registration is renewed renewed, regardless of whether the registration is renewed after it has expired, ~~or the day on which a new registration is applied for.~~

The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed pursuant to G.S. 105-330.3(a)(2). The ownership, situs, and taxability of a classified motor vehicle listed or discovered pursuant to G.S. 105-330.3(a)(2) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed.

(b) A classified motor vehicle shall be appraised by the assessor at its true value in money as prescribed by G.S. 105-283. The owner of a classified motor vehicle may appeal the appraised ~~value, situs, or taxability~~ value of the vehicle in the manner provided by G.S. 105-312(d) for appeals ~~in the case of discovered property, property and may appeal the situs or taxability of the vehicle in the manner provided by G.S. 105-381.~~ The owner of a classified motor vehicle must file an appeal of appraised value with the assessor within 30 days after the date of the tax notice prepared pursuant to G.S. 105-330.5. Notwithstanding G.S. 105-312(d), an owner who appeals the ~~listing, valuation, or assessment~~ appraised value of a classified motor vehicle shall pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.

(c) The Department of Revenue, acting through the Property Tax Division, and the Department of Transportation, acting through the Division of Motor Vehicles, shall enter into a memorandum of understanding concerning the vehicle identification information, name and address of the



owner, and other information that will be required on the motor vehicle registration forms to implement the tax listing and collection provisions of this Article."

**Sec. 2.** G.S. 105-330.4 reads as rewritten:

*"§ 105-330.4. Due date, interest, and enforcement remedies.*

(a) Taxes on a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) shall be due on September 1 following the date by which the vehicle was required to be listed. Taxes on a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall be due each year on the following dates:

- (1) For a vehicle registered under the staggered system, taxes shall be due on the first day of the fourth month following the date the registration expires or on the first day of the fourth month following the last day of the month in which the new registration is applied for.
- (2) For a vehicle newly registered under the annual system, taxes shall be due on the first day of the fourth month following the date the new registration is applied for. For a vehicle whose registration is renewed under the annual system, taxes shall be due on May 1 following the date the registration expired or following the December in which a new registration was obtained, expired.

(b) Subject to the provisions of G.S. 105-395.1, interest on unpaid taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) accrues at the rate of three-fourths of one percent ( $3/4\%$ ) per month beginning the first month following the date the taxes were due until the taxes are paid, paid, unless the tax notice required by G.S. 105-330.5 is prepared after the date the taxes are due. In that circumstance, the interest accrues beginning the second month following the date of the notice until the taxes are paid. Subject to the provisions of G.S. 105-395.1, interest on delinquent taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2) accrues as provided in G.S. 105-360(a) and discounts shall be allowed as provided in G.S. 105-360(c).

(c) Unpaid taxes on classified motor vehicles may be collected by levying on the motor vehicle taxed or on any other personal property of the taxpayer pursuant to G.S. 105-366 and G.S. 105-367, or by garnishment of the taxpayer's property pursuant to G.S. 105-368. Notwithstanding the provisions of G.S. 105-366(b), the enforcement measures of levy, attachment, and garnishment may be used to collect unpaid taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) at any time after interest accrues. Notwithstanding the provisions of G.S. 105-355, taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) do not become a lien on real property owned by the taxpayer."

**Sec. 3.** G.S. 105-330.5 reads as rewritten:

*"§ 105-330.5. Listing and collecting procedures.*

(a) For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1), upon receiving the registration lists from the Division of Motor Vehicles each month, the assessor shall prepare a tax notice for each vehicle; the tax notice shall contain all county, municipal, and special district taxes due on the motor vehicle. In computing the taxes, the assessor

shall appraise the motor vehicle in accordance with G.S. 105-330.2 and shall use the tax rates of the various taxing units in effect on the first day of the month in which the current vehicle registration expired or the new registration was applied for. This procedure shall constitute the listing and assessment of each classified motor vehicle for taxation. The tax notice shall contain:

- (1) The date of the tax notice.
- (2) The appraised value of the motor vehicle.
- (3) The tax rate of the taxing units.
- (4) A statement that the appraised ~~value, situs, and taxability~~ value of the motor vehicle may be appealed to the assessor within 30 days after the date of the notice.

(a) When a new registration is obtained for a vehicle registered under the annual system in a month other than December, the assessor shall prorate the taxes due for the remainder of the calendar year. The amount of prorated taxes due is the product of the proration fraction and the taxes computed according to subsection (a). The numerator of the proration fraction is the number of full months remaining in the calendar year following the date the registration is applied for and the denominator of the fraction is 12.

(b) When the tax notice required by subsection (a) is prepared, the county tax collector shall mail a copy of the notice, with appropriate instructions for payment, to the motor vehicle owner. The county may retain the actual cost of collecting municipal and special district taxes collected pursuant to this ~~section~~, Article, not to exceed one and one-half percent (1 1/2%) of the amount of taxes collected. The county finance officer shall establish procedures to ensure that tax payments received pursuant to this ~~section~~ Article are properly accounted for and taxes due other taxing units are remitted to the units to which they are due ~~no later than 30 days after the date of collection~~, at least once each month. Each month, a county shall provide reasonable information to the municipalities and special districts located in it to enable them to account for the tax payments remitted to them.

(c) For classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2), the assessor shall appraise each vehicle in accordance with G.S. 105-330.2. The assessor shall prepare a tax notice for each vehicle before September 1 following the January 31 listing date; the tax notice shall include all county and special district taxes due on the motor vehicle. In computing the taxes, the assessor shall use the tax rates of the taxing units in effect for the fiscal year that begins on July 1 following the January 31 listing date. Municipalities shall list, assess, and tax classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2) as provided in G.S. 105-326, 105-327, and 105-328 and shall send tax notices as provided in this section.

(d) The county shall include taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) in the tax levy for the fiscal year in which the taxes become due and shall charge the taxes to the tax collector for that ~~year~~, year, unless the tax notice required by subsection (a) is prepared after the date the taxes are due. If that occurs, the county shall include the taxes from that notice in the tax levy for the current fiscal year and shall charge the taxes to the tax collector for that year."

**Sec. 4.** G.S. 105-330.6 reads as rewritten:

"§ 105-330.6. *Motor vehicle tax year; transfer of plates; surrender of plates.*

(a) The tax year for a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) and registered under the staggered system shall begin on the first day of the first month following the date on which the registration expires or the new registration is applied for and end on the last day of the twelfth month following the date on which the registration expires or the new registration is applied for. The tax year for a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) and registered under the annual system shall begin on the first day of the first month following the date on which the registration expires or the new registration is applied for and end the following December 31. The tax year for a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) shall be the fiscal year that opens in the calendar year in which the vehicle is required to be listed.

(b) If the owner of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) transfers the registration plates from the listed vehicle to another classified motor vehicle pursuant to G.S. 20-64 during the listed vehicle's tax year, the vehicle to which the plates are transferred is not required to be listed or taxed until the current registration expires or is renewed.

(c) If the owner of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) transfers the motor vehicle to a new owner and surrenders the registration plates from the listed vehicle to the Division of Motor Vehicles and at the date of surrender one or more full calendar months remains in the listed vehicle's tax year, the owner may apply for a release or refund of taxes on the vehicle for the full calendar months remaining after surrender. To apply for a release or refund, the owner must present to the county tax collector within ~~60~~ 120 days after surrendering the plates the receipt received from the Division of Motor Vehicles accepting surrender of the registration plates. The county tax collector shall then multiply the amount of the taxes for the tax year on the vehicle by a fraction, the denominator of which is 12 and the numerator of which is the number of full calendar months remaining in the vehicle's tax year after the date of surrender of the registration plates. The product of the multiplication is the amount of taxes to be released or refunded. If the taxes have not been paid at the date of application, the county tax collector shall make a release of the prorated taxes and credit the owner's tax notice with the amount of the release. If the taxes have been paid at the date of application, the county tax collector shall direct an order for a refund of the prorated taxes to the county finance officer, and the finance officer shall issue a refund to the vehicle owner."

**Sec. 5.** This act is effective for taxes imposed for taxable years beginning on or after July 1, 1995.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 908

CHAPTER 511

AN ACT RELATING TO THE POWER OF WATER AND SEWER  
AUTHORITIES AND CITIES AND COUNTIES TO REQUIRE  
CONNECTIONS TO WATER AND SEWER SYSTEMS. THE

NUMBER OF MEMBERS OF CERTAIN METROPOLITAN  
SEWERAGE DISTRICTS, AND THE POWERS OF THE STANLY  
AIRPORT AUTHORITY.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 162A-6 reads as rewritten:

"§ 162A-6. *Powers of authority generally.*

Each authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each such authority is, subject to the provisions of G.S. 162A-7, hereby authorized and empowered:

- (1) To adopt bylaws for the regulation of its affairs and the conduct of its business;
- (2) To adopt an official seal and alter the same at pleasure;
- (3) To maintain an office at such place or places as it may designate;
- (4) To sue and be sued in its own name, plead and be impleaded;
- (5) To acquire, lease as lessee or lessor, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system or part thereof or any sewer system or part thereof or any combination thereof within or without the participating political subdivisions or any thereof;
- (6) To issue revenue bonds of the authority as hereinafter provided to pay the cost of such acquisition, construction, reconstruction, improvement, extension, enlargement or equipment;
- (7) To issue revenue refunding bonds of the authority as hereinafter provided;
- (8) To combine any water system and any sewer system as a single system for the purpose of operation and financing;
- (9) To fix and revise from time to time and to collect rates, fees and other charges for the use of or for the services and facilities furnished by any system operated by the authority;
- (10) To acquire in the name of the authority by gift, grant, purchase, devise, exchange, lease, acceptance of offers of dedication by plat, or any other lawful method, to the same extent and in the same manner as provided for cities and towns under the provisions of G.S. 160A-240.1 and G.S. 160A-374, or the exercise of the right of eminent domain in accordance with the General Statutes of North Carolina which may be applicable to the exercise of such powers by municipalities or counties, any lands or rights in land or water rights in connection therewith, and to acquire such personal property, as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement or operation of any water system or sewer system, and to hold and dispose of all real and personal property under its control; provided, that the taking of water from any stream or reservoir by any authority created under the provisions of this Article shall not vest in the taker any rights by prescription; provided, further, that nothing in this



- section shall affect rights by prescription, if any, now held by any municipality and which may be later transferred to any authority of which such municipality may become a member;
- (11) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article, including a trust agreement or trust agreements securing any revenue bonds issued hereunder, and to employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants and attorneys, and such employees and agents as may, in the judgment of the authority be deemed necessary, and to fix their compensation: provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this Article;
- (12) To enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any political subdivision, private corporation, copartnership, association or individual providing for the acquisition, construction, reconstruction, improvement, extension, enlargement, operation or maintenance of any water system or sewer system or providing for or relating to the treatment and disposal of sewage or providing for or relating to any water system or the purchase or sale of water;
- (13) To receive and accept from any federal, State or other public agency and any private agency, person or other entity, donations, loans, grants, aid or contributions of any money, property, labor or other things of value for any sewer system or water system, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided;
- (14) To enter into contract with any political subdivision by which the authority shall assume the payment of the principal of and interest on indebtedness of such subdivision; and
- (14a) To make special assessments against benefited property within the area served or to be served by the authority for the purpose of constructing, reconstructing, extending, or otherwise improving water systems or sanitary collection, treatment, and sewage disposal systems, in the same manner that a county may make special assessments under authority of Chapter 153A, Article 9, except that the language appearing in G.S. 153A-185 reading as follows: 'A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project,' shall not apply to assessments levied by Water and Sewer Authorities established pursuant to Chapter 162A, Article 1, of the General Statutes. For the purposes of this paragraph, references in Chapter 153A, Article 9, to the 'county,' the 'board of county commissioners,' 'the board' or a specific county official or employee are deemed to refer, respectively, to



the authority and to the official or employee of the authority who performs most nearly the same duties performed by the specified county official or employee.

Assessment rolls after being confirmed shall be filed for registration in the office of the Register of Deeds of the county in which the property being assessed is located, and the term 'county tax collector' wherever used in G.S. 153A-195 and 153A-196, shall mean the Executive Director or other administrative officer designated by the authority to perform the functions described in said sections of the statute.

(14b) To provide for the defense of civil and criminal actions and payment of civil judgments against employees and officers or former employees and officers and members or former members of the governing body as authorized by G.S. 160A-167, as amended.

(14c) To adopt ordinances to regulate and control the discharge of sewage or stormwater into any sewerage system owned or operated by the authority and to adopt ordinances to regulate and control structural and natural stormwater and drainage systems of all types. Prior to the adoption of any such ordinance or any amendment to any such ordinance, the authority shall first pass a declaration of intent to adopt such ordinance or amendment. The declaration of intent shall describe the ordinance which it is proposed that the authority adopt. The declaration of intent shall be submitted to each governing body for review and comment. The authority shall consider any comment or suggestions offered by any governing body with respect to the proposed ordinance or amendment. Thereafter, the authority shall be authorized to adopt such ordinance or amendment to it at any time after 60 days following the submission of the declaration of intent to each governing body.

(14d) To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the authority and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the authority to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by an authority only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the authority is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the authority has installed water or sewer lines or a combination thereof directly available to the

property, the authority may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. This subdivision applies only to a water and sewer authority whose membership includes part or all of a county that has a population of at least 40,000 according to the most recent annual population estimates certified by the State Planning Officer.

- (15) To do all acts and things necessary or convenient to carry out the powers granted by this Article.
- (16) To purchase real or personal property as provided by G.S. 160A-20, in addition to any other method allowed under this Article."

**Sec. 2.** G.S. 162A-14 reads as rewritten:

*"§ 162A-14. Conveyances and contracts between political subdivisions and authority.*

The governing body of any political subdivision is hereby authorized and empowered:

- (1) Pursuant to the provisions of G.S. 160A-274 and subject to the approval of the Local Government Commission, except for action taken hereunder by any State agency, to transfer jurisdiction over, and to lease, lend, grant or convey to an authority upon the request of the authority, upon such terms and conditions as the governing body of such political subdivision may agree with the authority as reasonable and fair, the whole or any part of any existing water system or sewer system or such real or personal property as may be necessary or desirable in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, repair, maintenance or operation of any water system or sewer system or part thereof by the authority, including public roads and other property already devoted to public use;
- (2) To make and enter into contracts or agreements with an authority, upon such terms and conditions and for such periods as are agreed to by the governing body of such political subdivision and the authority;
  - a. For the collection, treatment or disposal of sewage by the authority or for the purchase of a supply of water from the authority;
  - b. For the collecting by such political subdivision or by the authority of fees, rates or charges for water furnished to such political subdivision or to its inhabitants and for the services and facilities rendered to such political subdivision or to its inhabitants by any water system or sewer system of the authority, and for the enforcement of delinquent charges for such water, services and facilities; ~~and~~
  - c. For shutting off the supply of water furnished by any water system owned or operated by such political subdivision in the event that the owner, tenant or occupant of any premises utilizing such water shall fail to pay any rates, fees or charges

for the use of or for the services furnished by any sewer system of the authority, within the time or times specified in such contract; and

- d. For requiring the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the corporate limits of the political subdivision and located within a reasonable distance of any waterline or sewer connection line owned, leased as lessee, or operated by the authority to connect to the line and collecting, on behalf of the authority, charges for the connections and requiring, as a condition to the issuance of any development permit or building permit by the political subdivision, evidence that any impact fee by the authority has been paid by or on behalf of the applicant for the permit.

- (3) To fix, and revise from time to time, rates, fees and other charges for water and for the services furnished or to be furnished by any water system or sewer system of the authority, or parts thereof, under any contract between the authority and such political subdivision, and to pledge all or any part of the proceeds of such rates, fees and charges to the payment of any obligation of such political subdivision under such contract; and
- (4) In its discretion, to submit to the qualified electors under the election laws applicable to such political subdivision any contract or agreement which such governing body is authorized to make and enter into with the authority under the provisions of this Article."

**Sec. 2.1.** G.S. 162A-67(a) reads as rewritten:

"(a) Appointment of Board for District Lying Wholly or Partly outside City or Town Limits. -- The district board of a metropolitan sewerage district lying in whole or in part outside the corporate limits of a city or town shall be appointed immediately after the creation of the district in the following manner:

- (1) If the district lies entirely within one ~~county~~, county with a population of 25,000 or more, the board of commissioners of that county shall appoint to the district board three members who are qualified voters residing within the district. The initial members so appointed shall have terms expiring one year, two years and three years, respectively, from the date of adoption of the resolution of the Environmental Management Commission creating the district, and the board of commissioners shall designate the length of the term of each initial member. Successor members shall be appointed for a term of three years.

- (1a) If the district lies entirely within one county with a population of less than 25,000, the board of commissioners of that county shall appoint to the district board five members who are qualified voters residing within the district. Of the initial members so appointed, one shall have a term expiring at the end of one year, two shall have terms expiring at the end of two years, and two shall have terms expiring at the end of three years from the date

of adoption of the resolution of the Environmental Management Commission creating the district. In making initial appointments, the board of commissioners shall specify whether a member is to serve a term of one, two, or three years. Successor members shall be appointed for a term of three years.

- (2) If the district lies in two counties, the board of commissioners of the county in which the largest portion of the district lies shall appoint to the district board two qualified voters residing in the county and district to serve for terms of one year and three years, respectively. The board of commissioners of the county in which the lesser portion of the district lies shall appoint to the district board one qualified voter residing in the county and district to serve for a term of two years. All successor members shall be appointed for a term of three years.
- (3) If the district lies in three or more counties, the board of commissioners of each such county shall appoint one member of the district board. Each member so appointed shall be a qualified voter residing in the district and of the county from which he is appointed and shall serve for a term of three years. Successor members shall be appointed for a term of three years.
- (4) The governing body of each political subdivision, other than counties, lying in whole or in part within the district, shall appoint one member of the district board. No appointment of a member of the district board shall be made by or in behalf of any political subdivision of which the board or boards of commissioners shall be the governing body. If any city or town within the district shall have a population, as determined from the latest decennial census, greater than that of all other political subdivisions (other than counties) and unincorporated areas within the district, the governing body of any such city or town shall appoint three members. All members and their successors appointed by the governing bodies of political subdivisions other than counties shall serve for a term of three years and shall be qualified voters residing in the district and the political subdivision from which they are appointed."

**Sec. 3.** G.S. 153A-284 reads as rewritten:

"§ 153A-284. *Power to require connections.*

A county may require the owner of improved property developed property on which there are situated one or more residential dwelling units or commercial establishments located so as to be served by a water line or sewer collection line ~~owned or operated by the county to connect his owned, leased as lessee, or operated by the county or on behalf of the county to connect the owner's premises with the water or sewer line and may fix charges for these connections. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the county has installed water or sewer lines or a combination thereof directly available to the property, the county may require payment of a periodic~~



availability charge, not to exceed the minimum periodic service charge for properties that are connected."

**Sec. 4.** G.S. 160A-317(a) reads as rewritten:

"(a) Connections. -- A city may require an owner of ~~improved property~~ developed property on which there are situated one or more residential dwelling units or commercial establishments located within the city limits and ~~upon or~~ within a reasonable distance of any water line or sewer collection line ~~owned or leased and~~ owned, leased as lessee, or operated by the city or on behalf of the city to connect the owner's premises with the water or sewer line or both, and may fix charges for the connections. In lieu of requiring connection under this subsection and in order to avoid hardship, the city may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected."

**Sec. 5.** It is the express purpose of this act to provide additional and alternative powers to the political subdivisions and authorities affected by this act and to provide additional and alternative methods by which the functions affected by this act may be performed. This act is not intended, and shall not be construed, to derogate, limit, or repeal any power now existing under any other law, whether general, special, or local.

**Sec. 6.** All general, special, or local laws, or parts thereof, inconsistent with the provisions of this act are declared to be inapplicable to the provisions of this act.

**Sec. 7.** Section 7 of Chapter 419 of the 1971 Session Laws, as amended by Section 2 of Chapter 342 of the 1995 Session Laws, reads as rewritten:

"Sec. 7. Private property needed by said Airport Authority for any airport, landing field or facilities of same may be acquired by gift or devise, or may be acquired by private purchase or by the exercise of the power of eminent domain, pursuant to the provisions of Chapter 40A of the General Statutes of North Carolina, as amended. When the Airport Authority files a complaint to condemn property for ~~the a purpose of establishing an industrial park on the property,~~ authorized by this act, title to the property and the right to immediate possession of the property vests in the Airport Authority when the complaint is filed and the Airport Authority deposits the value of the property in accordance with G.S. 40A-41, unless the owner of the property initiates an action for injunctive relief."

**Sec. 8.** The board of commissioners of a county that makes appointments to a metropolitan sewerage district board (i) that is in existence prior to the date this act becomes effective and (ii) the membership of which is increased from three to five as a result to the enactment of G.S. 162A-67(a)(1) by Section 2.1 of this act, shall appoint two additional members to the metropolitan sewerage district board within 90 days of the date this act becomes effective. The two additional members shall be appointed to initial terms:

- (1) Of at least one year each.
- (2) That expire on the same day and month that the terms of the three original members expire.



- (3) So that no more than two of the five terms shall expire in the same year.

**Sec. 9.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

H.B. 1001

## CHAPTER 512

AN ACT TO PROVIDE THAT ANTIQUE AUTOMOBILES SHALL BE VALUED AT NO MORE THAN FIVE HUNDRED DOLLARS FOR PROPERTY TAX PURPOSES AND TO ELIMINATE DOUBLE TAXATION OF A MOTOR VEHICLE WHEN THE OWNER MOVES AWAY AND THEN RETURNS TO THE STATE WITHIN ONE YEAR.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 105-187.7 reads as rewritten:

"§ 105-187.7. ~~Credit for tax paid in another state.~~ *Credits.*

(a) Tax Paid in Another State. -- A person who, within 90 days before applying for a certificate of title for a motor vehicle on which the tax imposed by this Article is due, has paid a sales tax, an excise tax, or a tax substantially equivalent to the tax imposed by this Article on the vehicle to a taxing jurisdiction outside this State is ~~entitled to~~ allowed a credit against the tax due under this Article for the amount of tax paid to the other jurisdiction.

(b) Tax Paid Within One Year. -- A person who applies for a certificate of title for a motor vehicle that is titled in another state but was formerly titled in this State is allowed a credit against the tax due under this Article for the amount of tax paid under this Article by that person on the same vehicle within one year before the application for a certificate of title."

**Sec. 2.** Article 22A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-330.9. *Antique automobiles.*

(a) For the purpose of this section, the term 'antique automobile' means a motor vehicle that meets all of the following conditions:

- (1) It is registered with the Division of Motor Vehicles and has an historic vehicle special license plate under G.S. 20-79.4.
- (2) It is maintained primarily for use in exhibitions, club activities, parades, and other public interest functions.
- (3) It is used only occasionally for other purposes.
- (4) It is owned by an individual.
- (5) It is used by the owner for a purpose other than the production of income and is not used in connection with a business.

(b) Antique automobiles are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. An antique automobile shall be assessed at the lower of its true value or five hundred dollars (\$500.00)."

**Sec. 3.** Section 1 of this act becomes effective October 1, 1995; the remainder of this act is effective for taxes imposed for taxable years beginning on or after October 1, 1995.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

H.B. 545

### CHAPTER 513

## AN ACT TO BROADEN THE LAW PROVIDING FOR THE ESTABLISHMENT OF CARTWAYS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 136-68 reads as rewritten:

*"§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.*

The establishment, alteration, or discontinuance of any cartway, church road, mill road, or like easement, for the benefit of any person, firm, association, or corporation, over the lands of another, shall be determined by a special proceeding instituted before the clerk of the superior court in the county where the property affected is situated. Such special proceeding shall be commenced by a petition filed with said clerk and the service of a copy thereof on the person or persons whose property will be affected thereby. From any final order or judgment in said special proceeding, any interested party may appeal to the superior court for a jury trial de novo on all issues including the right to relief, the location of a cartway, tramway or railway, and the assessment of damages. ~~and the~~ The procedure established under Chapter 40, 40A, entitled 'Eminent Domain,' shall be followed in the conduct of such special proceeding insofar as the same is applicable and in harmony with the provisions of this section."

**Sec. 2.** G.S. 136-69 reads as rewritten:

*"§ 136-69. Cartways, tramways, etc., laid out; procedure.*

If In order to ensure that all landowners who do not have a deeded or documented easement or right-of-way to a public road shall have a legal means of obtaining access to that road, if any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or public or private cemetery, or the use of land as a single-family homestead, or taking action preparatory to the operation of any such enterprises, to which there is leading no public ~~road~~ road, reasonable deeded or documented easement or right-of-way to a public road, or other adequate means of transportation, other than a navigable waterway, affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in ~~the preceding section (G.S. 136-68), and if it shall~~ G.S. 136-68. Should it be made to appear to the court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the court shall appoint a jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not ~~less~~ more than 18 feet in width, of travel surface or such other minimum width requested in the petition and found necessary and proper by the court, and not more than 30 feet in width

for cuts, fills, and ditches or cableways, chutes, and flumes, and flumes. If a cartway is granted for the use of one or more single-family homesteads, each single-family homestead must consist of at least seven acres of land. Where there exists a private railroad crossing, that private railroad crossing may be used as part of a cartway established under this Article provided the person, firm, association or corporation seeking the cartway agrees to share proportionately with other landowners authorized to use the crossing the cost of maintaining the private crossing and to protect and hold harmless the railroad against all liability associated with the crossing, provided the railroad is being operated in a lawful manner at or in the vicinity of the crossing. Except as herein provided for the establishment of a cartway over an existing private railroad crossing, no real estate, right-of-way, easement, leasehold, or other interest in land which has been condemned by a railroad, or has been obtained for a railroad's use as a right-of-way, depot, or station house shall be used for the establishment of a cartway or other use under this Article except by agreement with the railroad. Should a petitioner seeking a cartway request a new railroad crossing, the railroad shall negotiate in good faith the location of the new crossing at the requested location or some other mutually agreeable location. The jury of view shall assess the damages the owner or owners of the land crossed may sustain thereby, and make report of their findings in writing to the clerk of the superior court. Exceptions to said report may be filed by any interested party and such exceptions shall be heard and determined by the clerk of the superior court. The clerk of the superior court may affirm or modify said report, or set the same aside and order a new jury of view. All damages assessed by a judgment of the clerk, together with the cost of the proceeding, shall be paid into the clerk's office before the petitioners shall acquire any rights under said proceeding.

Where a tract of land lies partly in one county and partly in an adjoining county, or where a tract of land lies wholly within one county and the public road nearest or from which the most practical roadway to said land would run, lies in an adjoining county and the practical way for a cartway to said land would lead over lands in an adjoining county, then and in that event the proceeding for the laying out and establishing of a cartway may be commenced in either the county in which the land is located or the adjoining county through which said cartway would extend to the public road, and upon the filing of such petition in either county the clerk of the court shall have jurisdiction to proceed for the appointment of a jury from the county in which the petition is filed and proceed for the laying out and establishing of a cartway as if the tract of land to be reached by the cartway and the entire length of the cartway are all located within the bounds of said county in which the petition may be filed. A permissive use of a right-of-way or easement across the land of another shall not be a bar to the establishment of a cartway under this Article. In determining the path of a cartway, tramway or railway the jury of view shall give priority to the location of previously used easements or cartways.

**Sec. 3.** G.S. 136-70 reads as rewritten:

*"§ 136-70. Alteration or abandonment of cartways, etc., in same manner.*

Cartways or other ways established under this Article or heretofore established, may be altered, changed, or abandoned in like manner as herein provided for their establishment upon petition instituted by any interested party; ~~Provided, that all cartways, tramways, or railways established for the removal of timber shall automatically terminate at the end of a period of five years, unless a greater time is set forth in the petition and the judgment establishing the same.~~ A cartway established under this Article shall not terminate until the time specified in the petition and as found necessary and proper by the court."

**Sec. 3a.** Compensation to the landowner for the establishment of a cartway over the property of another shall be as provided in Chapter 40A Article 4 of the North Carolina General Statutes.

**Sec. 4.** This act is effective upon ratification but sections 2 and 3 shall expire on July 1, 1997. This act applies to actions to establish cartways filed on or after the effective date, but before July 1, 1997.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

H.B. 729

## CHAPTER 514

### AN ACT TO ESTABLISH STANDARDS AND PROCEDURES FOR THE RECOVERY OF PUNITIVE DAMAGES IN CIVIL ACTIONS.

*The General Assembly of North Carolina enacts:*

**Section 1.** The General Statutes are amended by adding a new Chapter to read:

#### "Chapter 1D.

#### "Punitive Damages.

##### "§ 1D-1. Purpose of punitive damages.

Punitive damages may be awarded, in an appropriate case and subject to the provisions of this Chapter, to punish a defendant for egregiously wrongful acts and to deter the defendant and others from committing similar wrongful acts.

##### "§ 1D-5. Definitions.

As used in this Chapter:

- (1) 'Claimant' means a party, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff, seeking recovery of punitive damages. In a claim for relief in which a party seeks recovery of punitive damages related to injury to another person, damage to the property of another person, death of another person, or other harm to another person, 'claimant' includes any party seeking recovery of punitive damages.
- (2) 'Compensatory damages' includes nominal damages.
- (3) 'Defendant' means a party, including a counterdefendant, cross-defendant, or third-party defendant, from whom a claimant seeks relief with respect to punitive damages.
- (4) 'Fraud' does not include constructive fraud unless an element of intent is present.



- (5) 'Malice' means a sense of personal ill will toward the claimant that activated or incited the defendant to perform the act or undertake the conduct that resulted in harm to the claimant.
- (6) 'Punitive damages' means extracompensatory damages awarded for the purposes set forth in G.S. 1D-1.
- (7) 'Willful or wanton conduct' means the conscious and intentional disregard of and indifference to the rights and safety of others, which the defendant knows or should know is reasonably likely to result in injury, damage, or other harm. 'Willful or wanton conduct' means more than gross negligence.

"§ 1D-10. Scope of the Chapter.

This Chapter applies to every claim for punitive damages, regardless of whether the claim for relief is based on a statutory or a common-law right of action or based in equity. In an action subject to this Chapter, in whole or in part, the provisions of this Chapter prevail over any other law to the contrary.

"§ 1D-15. Standards for recovery of punitive damages.

(a) Punitive damages may be awarded only if the claimant proves that the defendant is liable for compensatory damages and that one of the following aggravating factors was present and was related to the injury for which compensatory damages were awarded:

- (1) Fraud.
- (2) Malice.
- (3) Willful or wanton conduct.

(b) The claimant must prove the existence of an aggravating factor by clear and convincing evidence.

(c) Punitive damages shall not be awarded against a person solely on the basis of vicarious liability for the acts or omissions of another. Punitive damages may be awarded against a person only if that person participated in the conduct constituting the aggravating factor giving rise to the punitive damages, or if, in the case of a corporation, the officers, directors, or managers of the corporation participated in or condoned the conduct constituting the aggravating factor giving rise to punitive damages.

(d) Punitive damages shall not be awarded against a person solely for breach of contract.

"§ 1D-20. Election of extracompensatory remedies.

A claimant must elect, prior to judgment, between punitive damages and any other remedy pursuant to another statute that provides for multiple damages.

"§ 1D-25. Limitation of amount of recovery.

(a) In all actions seeking an award of punitive damages, the trier of fact shall determine the amount of punitive damages separately from the amount of compensation for all other damages.

(b) Punitive damages awarded against a defendant shall not exceed three times the amount of compensatory damages or two hundred fifty thousand dollars (\$250,000), whichever is greater. If a trier of fact returns a verdict for punitive damages in excess of the maximum amount specified under this subsection, the trial court shall reduce the award and enter judgment for punitive damages in the maximum amount.



(c) The provisions of subsection (b) of this section shall not be made known to the trier of fact through any means, including voir dire, the introduction into evidence, argument, or instructions to the jury.

"§ 1D-26. Driving while impaired; exemption from cap.

G.S. 1D-25(b) shall not apply to a claim for punitive damages for injury or harm arising from a defendant's operation of a motor vehicle if the actions of the defendant in operating the motor vehicle would give rise to an offense of driving while impaired under G.S. 20-138.1, 20-138.2, or 20-138.5.

"§ 1D-30. Bifurcated trial.

Upon the motion of a defendant, the issues of liability for compensatory damages and the amount of compensatory damages, if any, shall be tried separately from the issues of liability for punitive damages and the amount of punitive damages, if any. Evidence relating solely to punitive damages shall not be admissible until the trier of fact has determined that the defendant is liable for compensatory damages and has determined the amount of compensatory damages. The same trier of fact that tried the issues relating to compensatory damages shall try the issues relating to punitive damages.

"§ 1D-35. Punitive damages awards.

In determining the amount of punitive damages, if any, to be awarded, the trier of fact:

- (1) Shall consider the purposes of punitive damages set forth in G.S. 1D-1; and
- (2) May consider only that evidence that relates to the following:
  - a. The reprehensibility of the defendant's motives and conduct.
  - b. The likelihood, at the relevant time, of serious harm.
  - c. The degree of the defendant's awareness of the probable consequences of its conduct.
  - d. The duration of the defendant's conduct.
  - e. The actual damages suffered by the claimant.
  - f. Any concealment by the defendant of the facts or consequences of its conduct.
  - g. The existence and frequency of any similar past conduct by the defendant.
  - h. Whether the defendant profited from the conduct.
  - i. The defendant's ability to pay punitive damages, as evidenced by its revenues or net worth.

"§ 1D-40. Jury instructions.

In a jury trial, the court shall instruct the jury with regard to subdivisions (1) and (2) of G.S. 1D-35.

"§ 1D-45. Frivolous or malicious actions; attorneys' fees.

The court shall award reasonable attorneys' fees, resulting from the defense against the punitive damages claim, against a claimant who files a claim for punitive damages that the claimant knows or should have known to be frivolous or malicious. The court shall award reasonable attorney fees against a defendant who asserts a defense in a punitive damages claim that the defendant knows or should have known to be frivolous or malicious.

"§ 1D-50. Judicial review of award.

When reviewing the evidence regarding a finding by the trier of fact concerning liability for punitive damages in accordance with G.S. 1D-15(a), or regarding the amount of punitive damages awarded, the trial court shall state in a written opinion its reasons for upholding or disturbing the finding or award. In doing so, the court shall address with specificity the evidence, or lack thereof, as it bears on the liability for or the amount of punitive damages, in light of the requirements of this Chapter."

**Sec. 2.** G.S. 28A-18-2(b) reads as rewritten:

"(b) Damages recoverable for death by wrongful act include:

- (1) Expenses for care, treatment and hospitalization incident to the injury resulting in death;
- (2) Compensation for pain and suffering of the decedent;
- (3) The reasonable funeral expenses of the decedent;
- (4) The present monetary value of the decedent to the persons entitled to receive the damages recovered, including but not limited to compensation for the loss of the reasonable expected;
  - a. Net income of the decedent,
  - b. Services, protection, care and assistance of the decedent, whether voluntary or obligatory, to the persons entitled to the damages recovered,
  - c. Society, companionship, comfort, guidance, kindly offices and advice of the decedent to the persons entitled to the damages recovered.
- (5) Such punitive damages as the decedent could have recovered pursuant to Chapter 1D of the General Statutes had he survived, and punitive damages for wrongfully causing the death of the decedent through ~~maliciousness, wilful or wanton injury, or gross negligence;~~ malice or willful or wanton conduct, as defined in G.S. 1D-5;
- (6) Nominal damages when the jury so finds."

**Sec. 3.** G.S. 1A-1, Rule (9), as amended by Section 2 of Chapter 309 of the 1995 Session Laws, is amended by adding a new subsection to read as follows:

"(k) Punitive damages. -- A demand for punitive damages shall be specifically stated, except for the amount, and the aggravating factor that supports the award of punitive damages shall be averred with particularity. The amount of damages shall be pled in accordance with Rule 8."

**Sec. 4.** The provisions of this act are severable. If any portion of this act is declared unconstitutional or the application of this act to any person or circumstances is held invalid, the remaining portions and their applicability to any person or circumstances are valid.

**Sec. 5.** This act becomes effective January 1, 1996, and applies to claims for relief arising on or after that date.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

H.B. 738

## CHAPTER 515

AN ACT TO AUTHORIZE THE ISSUANCE OF TWENTY-THREE MILLION NINE HUNDRED THOUSAND DOLLARS OF COMMUNITY COLLEGE BONDS OR NOTES, AND TO APPROPRIATE THE PROCEEDS OF THESE BONDS AND NOTES FOR SPECIFIC COMMUNITY COLLEGE CAPITAL PROJECTS, AND TO PROVIDE FOR REALLOCATION OF THE PROCEEDS OF COMMUNITY COLLEGE BONDS OR NOTES IF MATCHING REQUIREMENTS ARE NOT MET.

*The General Assembly of North Carolina enacts:*

**Section 1.** *Legislative authorization to issue bonds.* -- In accordance with the requirements of Section 6(b)II of Chapter 542 of the 1993 Session Laws (the "Bond Act"), the General Assembly hereby authorizes the issuance of twenty-three million nine hundred thousand dollars (\$23,900,000) of Community College Bonds authorized by the Bond Act and approved by the qualified voters of the State who voted thereon on the first Tuesday after the first Monday of November 1993. The proceeds of Community College Bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "1995 Community College Bonds Fund" and shall be disbursed as provided in this act.

**Sec. 2.** *Appropriation of bond proceeds.* -- In accordance with the requirements of Section 6(b)II of the Bond Act, the General Assembly hereby appropriates the proceeds of the twenty-three million nine hundred thousand dollars (\$23,900,000) of Community College Bonds and notes for specific projects as provided in this act and subject to change as provided in this act. The proceeds of Community College Bonds and notes shall be used for the purpose of making grants to community colleges, as defined in Chapter 115D of the General Statutes, the proceeds of the grants to be allocated and expended for paying the cost of Community College capital improvements, including, without limitation, construction and renovation of classroom buildings, laboratory buildings, research facilities, libraries, physical education facilities, continuing education centers, student cafeteria and activity facilities, including sports facilities, administrative office buildings, and related equipment and land acquisition. The buildings constructed using the proceeds of the bonds may be constructed only after consideration of the energy design guidelines developed by the Energy Division of the Department of Commerce.

Any additional moneys which may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any Community College grants authorized by this act may be placed by the State Treasurer in the 1995 Community College Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act.

The proceeds of Community College Bonds and notes may be used with any other moneys made available by the General Assembly for the making of Community College grants, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of Community College Bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act for Community College improvements shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

The State Board of Community Colleges shall provide quarterly reports to the Joint Legislative Commission on Governmental Operations, the chairs of the Senate and House of Representatives Appropriations Committees, and the Fiscal Research Division on the expenditure of moneys from the 1995 Community College Bonds Fund.

**Sec. 3.** *Allocations of funds for specific projects.* -- The proceeds of grants made from the proceeds of twenty-three million nine hundred thousand dollars (\$23,900,000) of Community College Bonds and notes shall be allocated and expended for paying the cost of Community College capital improvements, to the extent and as provided in this act and subject to change as provided in this act, as follows:

COLLEGE	CAPITAL IMPROVEMENTS	PROJECTED ALLOCATION
Alamance CC	Phase III - LRC Expansion	\$ 349,870
Anson CC	Advanced Technology Center	316,954
Union Cty.	Advanced Technology Center	264,264
Asheville- Buncombe TCC	Classroom/Lab/Office Building	528,527
Beaufort County CC	Student Services Center	306,546
Bladen CC	Allied Health Care Center	107,341
Blue Ridge CC	Allied Health Building	528,527
Transylvania Cty.	Classroom/Office Bldg.	53,088
Brunswick CC	Allied Health/Classroom	422,822
Caldwell CC & TI	Classroom/Lab Building	644,803
Watauga Cty.	Classroom/Lab Bldg.	239,057
Cape Fear CC	Health Sciences Building	775,929
Pender Cty.	Classroom Building	72,959

Carteret CC	Classroom/Student Center	257,700
Catawba Valley CC	Physical Ed./Classroom Bldg.	590,494
Central Carolina CC	Classroom Building	211,411
Chatham Cty.	Classroom Building	211,411
Harnett Cty.	Classroom Building	105,705
Central Piedmont CC	Science Labs Expansion	417,536
Cleveland CC	Advanced Technology Building	233,928
Coastal Carolina CC	Public Service Technology Bldg.	317,116
College of the Albemarle	Classroom/Administration Bldg.	339,941
Dare Cty.	Class/Lab/Student Services Bldg.	158,558
Craven CC	Academic Studies/Basic Skills Bldg.	294,947
Davidson County CC	Advanced Technology Building	409,609
Davie Cty.	Class/Lab/Instructional Support Bldg.	209,297
Durham TCC	Classroom/Office Building	613,092
Edgecombe CC	Class/Lab Addition-Rocky Mount	126,847
Fayetteville TCC	Health & Science Facility	634,233
Forsyth TCC	Class/Lab/Admin. - East Campus	835,073
Gaston College	Work Force Preparedness Center	619,434
Guilford TCC	Applied Technology Building	818,160
Halifax CC	Literacy Ed/Science Building	212,319
Haywood CC	Classroom Building	116,276
Isothermal CC	Cultural Arts Center	575,507
Polk Cty.	Classrooms/Labs Addition	37,915
James Sprunt CC	Multi-Purpose Center	391,999
Johnston CC	Allied Health Building	317,116
Lenoir CC	Classroom/Auditorium Building	351,613
Greene Cty.	New Instructional Facility	158,558
Jones Cty.	New Vocational Annex	10,571



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Martin CC	Equine Arena	61,050
Bertie Cty.	Class/Lab/Office Building	26,426
Mayland CC	Shop/Student Lecture Hall	426,793
McDowell TCC	Classroom Building	200,840
Mitchell CC	Renovate Main Building	232,552
Montgomery CC	LRC Building	274,063
Nash CC	LRC/Student Center	466,074
Pamlico CC	Multi-Purpose Class/Office Bldg.	123,143
Piedmont CC	Classroom/Faculty Office Bldg.	48,605
Caswell Cty.	Adult Learning Center	137,417
Pitt CC	Student Services Building	475,674
Randolph CC	Allied Hlth/Science & Tech Center	297,759
Richmond CC	Fine Arts Ctr/Auditorium	237,987
Roanoke-Chowan CC	Classroom/Student Support Center	269,452
Robeson CC	Teaching Theaters/Allied Hlth Classroom	151,183
Rockingham CC	Multi-Purpose Building	285,405
Rowan-Cabarrus CC	Engineering Building	443,963
Cabarrus Cty.	Classroom Building	166,308
Sampson CC	Multi-Purpose Building	264,264
Sandhills CC	Cont. Ed. Center/Classrooms	507,386
Hoke Cty.	Renovate Classrooms	31,710
Southeastern CC	Nursing/Allied Health Building	138,411
Southwestern CC	General Classroom Building	211,411
Macon Cty.	Region Law Enf. Defensive Dr. Course	31,712
Swain Cty.	Class/Lab/Office Bldg.	95,135
Stanly CC	Learning Resource Center	247,479
Surry CC	Health/Day Care/Library Building	428,574
Tri-County CC	Student Services Ctr./Classroom Bldg.	118,708

Graham Cty.	Class/Lab/Study Bldg.	50,739
Vance-Granville CC	Allied Health/Day Care/Classroom Bldg.	224,878
Franklin Cty.	Class/Lab/Office Building	158,558
Granville Cty.	Additional Classrooms	39,904
Warren Cty.	Campus Renovations	22,462
Wake TCC	Student Education Bldg.	1,162,760
Wayne CC	Student & Telecommunications Bldg.	668,970
Western Piedmont CC	Class/Office Bldg. (Bus. Tech.)	361,530
Wilkes CC	LRC-Student Development	496,816
Ashe Cty.	Classroom Building	21,141
Wilson TCC	Multi-Purpose Building	105,705
<b>TOTAL</b>		<b>\$23,900,000.</b>

Projected allocations set forth above may be adjusted to reflect the availability of other funds. The Board of Trustees of an individual community college may change the projects or allocations for that college, including a project or an allocation for a satellite campus, within the total amount of funds allocated for that college.

The Director of the Budget is empowered, when the Director of the Budget determines it is in the best interest of the State and the North Carolina Community College System to do so, and if the cost of a particular project is less than the projected allocation, to use the excess funds to increase the size of that project or increase the size of any other project itemized in this section, or to increase the amount allocated to a particular community college within the aggregate amount of funds available under this section. The Director of the Budget may consult with the Advisory Budget Commission and the Joint Legislative Commission on Governmental Operations before making these changes. In addition, the particular capital improvements and the amount of the projected allocation therefor set forth above may be changed from time to time as the General Assembly may decide.

Nothing in this act restricts the right of the General Assembly, in addition to the right to specify the projects and the allocations therefor, in 1995 or at a subsequent session to:

- (1) Establish a procedure whereby projected allocations set forth in subsequent legislation may be increased or decreased to reflect the availability of other funds, including, without limitation, contingency funds, income earned on the investment of bond and notes proceeds, and the proceeds of grants.
- (2) Establish a contingency account and provide for an allocation of bond proceeds thereto. The funds in the contingency account may be used to pay the cost of projects, the costs of issuance of bonds and notes, and increased project costs resulting from construction

costs exceeding projections, inflationary factors, and changes in projects and allocations. The funds allocated to the contingency account shall be placed by the State Treasurer in a separate account in the Community College Bonds Fund and shall be disbursed in accordance with the procedures established for disbursements from the Community College Bonds Fund.

- (3) Empower the Director of the Budget, when the Director determines it is in the best interest of the State and the North Carolina Community College System to do so, and if the cost of a particular project is less than the projected allocation, to use the excess funds to increase the size of that project or increase the size of any other project authorized by the General Assembly.

Allocations to the costs of a capital improvement or undertaking in each case may include allocations to pay the costs set forth in Section 3(4)c., d., e., f., and g. of the Bond Act in connection with the issuance of bonds for that capital improvement or undertaking. The matching requirements of G.S. 115D-31(a)(1) apply to the proceeds of Community College Bonds and notes used to make grants to community colleges.

**Sec. 4.** *Reallocation of Section 6(b)I and II proceeds.* Section 6(b) of Chapter 542 of the 1993 Session Laws, the Education, Clean Water, and and Parks Bond Act of 1993, is amended by adding the following at the end of that subsection:

"IV. If the State Board of Community Colleges determines that a community college has not met the matching requirements of G.S. 115D-31(a)(1) by July 1, 1998, with respect to a capital improvement project for which bond proceeds are allocated in subdivision I or pursuant to subdivision II of this subsection, the Board shall certify that fact to the State Treasurer by October 1, 1998. All of these bond proceeds with respect to which the Board certifies that the matching requirement has not been met by July 1, 1998, shall be placed by the State Treasurer in a special account within the Community Colleges Bond Fund and shall be used for making grants to community colleges. Bond proceeds in the special account shall be allocated among the community colleges in accordance with the following conditions:

- (1) The State Board of Community Colleges shall generate, by October 1, 1998, a priority ranking of legitimate community college capital improvement needs using a formula based on objective meaningful factors relevant to capital needs, including space to population ratio, population served ratio, capacity enrollment ratio, local to State and vocational education ratios, type of project, and readiness to implement.
- (2) The State Board of Community Colleges shall provide the State Treasurer a projected allocation of the proceeds in the special account in accordance with this priority ranking, except that:
  - a. No projected allocation shall be made for a community college that the Board certified in accordance with this subdivision IV had failed to meet a matching requirement.
  - b. No more than four million dollars (\$4,000,000) shall be allocated to a single community college.

c. Funds shall not be allocated for more than one project per community college.

- (3) The proceeds of grants made from bond proceeds in the special account shall be allocated and expended for paying the cost of community college capital improvements in accordance with this allocation by the State Board of Community Colleges, to the extent and as provided in this act. The Director of the Budget is empowered, when the Director of the Budget determines it is in the best interest of the State and the North Carolina Community College System to do so, and if the cost of a particular project is less than the projected allocation, to use the excess funds to increase the size of that project or increase the size of any other project itemized in this section, or to increase the amount allocated to a particular community college within the aggregate amount of funds available under this section. The Director of the Budget shall consult with the Advisory Budget Commission and the Joint Legislative Commission on Governmental Operations before making these changes."

**Sec. 5.** *Effective date.* -- This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 200

## CHAPTER 516

AN ACT TO AMEND ARTICLE 2A OF CHAPTER 119 OF THE GENERAL STATUTES REGARDING THE REGULATION OF REREFINED OR REPROCESSED OIL, AND TO PROVIDE FOR CIVIL PENALTIES FOR VIOLATIONS OF THE GASOLINE AND OIL INSPECTION LAW, THE MEAT INSPECTION LAW, AND THE ANIMAL WELFARE AND ANIMAL HEALTH LAWS.

*The General Assembly of North Carolina enacts:*

### PART I. REGULATION OF REREFINED OR REPROCESSED OIL LAWS

**Section 1.** G.S. 119-13.1 reads as rewritten:

"§ 119-13.1. *Definitions.*

As used in this Article:

- (1) 'Lubricating oil' means any oil classified for the use in an internal combustion engine, hydraulic system, gear box, differential, or wheel bearings.
- (1) (1a) 'Rerefined or reprocessed oil' means lubricating oil for use in internal combustion engines, which has been rerefined or processed in whole or part from previously used lubricating oils, used oil that is refined to remove the physical and chemical contaminants acquired through use and that, by itself or when blended with new lubricating oil or additives, meets applicable American Petroleum Institute (A.P.I.) service classifications.

- (1b) 'Recycled oil' means any oil prepared from used oil for energy recovery or reuse as a petroleum product by reclaiming, reprocessing, rerefining, or other means that use properly treated used oil as a substitute for petroleum products.
- (2) 'Specifications' means the minimum chemical properties or analysis as determined by the American Society for Testing Materials (A.S.T.M.) test methods using current ASTM analytical procedures.
- (3) 'Used oil' means any oil that has been refined from crude or synthetic oil and, as a result of use, storage, or handling becomes unsuitable for its original purpose due to the loss of its original properties or the presence of impurities, but that may be rerefined for further use."

**Sec. 2.** G.S. 119-13.2 reads as rewritten:

*"§ 119-13.2. Labels required on sealed containers; oil to meet minimum specifications.*

(a) It shall be unlawful to offer for sale or sell or deliver in this State ~~rerefined or reprocessed oil~~, previously used oil that has not been rerefined or recycled oil that has not been rerefined, as ~~hereinbefore defined~~, defined in G.S. 119-13.1, in a sealed container unless this container be labeled or bear a label on which shall be expressed the brand or trade name of the oil and the words 'made from previously used lubricating oil'; the name and address of the person, firm, or corporation ~~who~~ that has rerefined or reprocessed said oil or placed it in the container; the Society of Automotive Engineers (S.A.E.) viscosity ~~number~~; grade; the net contents of the container expressed in U.S. liquid measure of quarts, gallons, or pints; which label has been registered and approved by the Gasoline and Oil Inspection Division of the Department of Agriculture; and that the oil in each container shall meet the minimum specifications. The Gasoline and Oil Inspection Board shall adopt minimum quality specifications, the measurement of which shall be accomplished using current A.S.T.M. analytical procedures.

(b) A person may represent a product made in whole or in part from rerefined oil to be substantially equivalent to a product made from virgin oil for a particular end use if the product conforms with the applicable American Petroleum Institute (A.P.I.) service classifications."

**Sec. 3.** G.S. 119-13.3 reads as rewritten:

*"§ 119-13.3. Violation a misdemeanor.*

Any person, firm, or corporation violating any of the provisions of this Article shall for each offense be guilty of a Class 1 ~~misdemeanor~~, misdemeanor. For a second or subsequent offense, the person shall also be enjoined from selling or distributing previously used oil for not less than one year nor more than five years."

## **PART II. GASOLINE AND OIL INSPECTION ACT.**

**Sec. 4.** Article 3 of Chapter 119 of the General Statutes is amended by adding the following new section:

*"§ 119-39.1. Civil Penalties.*

The Commissioner of Agriculture may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a



provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation."

### **PART III. MEAT INSPECTION LAWS.**

**Sec. 5.** G.S. 106-549.35 is amended by adding the following new subsection:

"(c) The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or Article 49B, or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation."

### **PART IV. ANIMAL WELFARE ACT.**

**Sec. 6.** Article 3 of Chapter 19A of the General Statutes, Animal Welfare Act, is amended by adding the following new section:

#### "§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation."

### **PART V. ANIMAL HEALTH LAWS.**

**Sec. 7.** Article 14A of Chapter 106 of the General Statutes, Licensing and Regulation of Rendering Plants and Rendering Operations, is amended by adding the following new section:

#### "§ 106-168.16. Civil Penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation."

**Sec. 8.** Article 34 of Chapter 106 of the General Statutes, Animal Diseases, is amended by adding the following:

#### "Part 12. Penalties.

#### "§ 106-405.20. Civil Penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation."

**Sec. 9.** Article 35 of Chapter 106 of the General Statutes, Public Livestock Markets, is amended by adding the following new section:

#### "§ 106-417.1. Civil Penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation."

**Sec. 10.** Article 35A of Chapter 106 of the General Statutes, Livestock Prompt Pay Law, is amended by adding the following new section:

"§ 106-418.7A. Civil Penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation."

**Sec. 11.** Article 35B of Chapter 106 of the General Statutes, Livestock Dealer Licensing Act, is amended by adding the following new section:

"§ 106-418.16. Civil Penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation."

**Sec. 12.** Article 49 of Chapter 106 of the General Statutes, Poultry, Hatcheries and Chick Dealers, is amended by adding the following new section:

"§ 106-549.1. Civil Penalties.

The Department of Agriculture may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Department shall consider the degree and extent of harm caused by the violation."

**Sec. 13.** Article 49E of Chapter 106 of the General Statutes, Disposal of Dead Diseased Poultry, is amended by adding the following new section:

"§ 106-549.72. Civil Penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation."

**Sec. 14.** Article 49F of Chapter 106 of the General Statutes, Biological Residues, is amended by adding the following new section:

"§ 106-549.89. Civil Penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation."

**Sec. 15.** Article 58 of Chapter 106 of the General Statutes, Biologics Laws, is amended by adding the following new section:

"§ 106-715. Civil Penalties.

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation."

**Sec. 16.** The organizational headings to the parts of this act, set forth in bolded uppercase, are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

**Sec. 17.** This act becomes effective October 1, 1995, and shall apply to violations occurring on or after that date.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 345

## CHAPTER 517

### AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE INSURANCE LAWS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 58-2-131(f) reads as rewritten:

"(f) Instead of examining any foreign or alien insurer licensed in this State, the Commissioner may accept an examination report on that insurer prepared by the insurer's domiciliary insurance regulator until January 1, 1994. Thereafter, reports may only be accepted if regulator. In making a determination to accept the domiciliary insurance regulator's report, the Commissioner may consider whether (i) the insurance regulator was at the time of the examination accredited under NAIC Financial Regulation Standards and Accreditation Program, or (ii) the examination is performed under the supervision of an NAIC-accredited insurance regulator or with the participation of one or more examiners who are employed by the regulator and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by the regulator."

**Sec. 2.** Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-2-171. Qualifications of actuaries.

The Commissioner may adopt rules setting forth requisite qualifications of consulting actuaries for the sole purpose of qualifying them to certify financial statements filed and rate filings made by entities under this Chapter as to the actuarial validity of those filings. The qualifications shall be commensurate with the degree of complexity of the actuarial principles applicable to the various statements filed or rate filings made. Nothing in this section affects the scope of practice or the professional qualifications of actuaries."

**Sec. 3.** G.S. 58-3-90 reads as rewritten:

"§ 58-3-90. Revocation, suspension, or restriction of license of foreign company; publication of notice.

(a) If the ~~Commissioner is of the opinion,~~ Commissioner, upon examination or other evidence, makes a written finding of fact that a foreign insurance company is in an unsound financial condition; or, if a life insurance company, that its actual funds, exclusive of its capital, are less than its liabilities; or that the company has failed to comply with the statutes, rules, or orders applicable to it; or if the company, its officers, employees, agents, or other representatives refuse to submit to examination or to

perform any legal obligation in relation to an examination, ~~he the~~ Commissioner shall revoke or suspend all licenses and authority to do business granted to the company or its agents, and shall give written notification of the revocation or suspension to all of the company's agents in this State; and ~~no new business may thereafter be done by the company or its agents in this State until the company's license and authority to do business is restored by the Commissioner, State.~~ Until the Commissioner restores the company's license and authority to do business in this State, neither the company nor its agents shall do any new business in this State.

(b) The Commissioner may, after considering the standards under G.S. 58-30-60(b), restrict a foreign insurer's license by prohibiting or limiting the kind or amount of insurance written by that insurer in this State. The Commissioner shall remove any restriction under this subsection once the Commissioner determines that the operations of the insurer are no longer hazardous to the public or to the insurer's policyholders or creditors."

Sec. 3.1. G.S. 58-3-170 reads as rewritten:

"§ 58-3-170. *Requirements for maternity coverage.*

(a) Every entity providing a health benefit plan that provides maternity coverage in this State shall provide benefits for the necessary care and treatment related to maternity that are no less favorable than benefits for physical illness generally.

(b) A health benefit plan that provides maternity coverage shall provide coverage for inpatient care for a mother and her newly-born child for a minimum of forty-eight (48) hours after vaginal delivery and a minimum of ninety-six (96) hours after delivery by caesarean section.

(b) (c) As used in this section, "health benefit plans" means accident and health insurance policies or certificates; nonprofit hospital or medical service corporation contracts; health, hospital, or medical service corporation plan contracts; health maintenance organization (HMO) subscriber contracts; and plans provided by a MEWA or plans provided by other benefit arrangements, to the extent permitted by ERISA."

Sec. 4. G.S. 58-7-30 reads as rewritten:

"§ 58-7-30. *Insolvency of ceding insurer; ~~exceptions.~~ exceptions; written reinsurance agreements.*

(a) No credit shall be allowed, as an admitted asset or as a deduction from liability, to any ceding insurer for reinsurance, unless the reinsurance is payable by the assuming insurer, on the basis of claims allowed against the ceding insurer under the contract or contracts reinsured without diminution because of the insolvency of the ceding insurer, directly to the ceding insurer or to its domiciliary receiver except (1) where the contract specifically provides for another payee of the reinsurance in the event of the insolvency of the ceding insurer or (2) where the assuming insurer, with the consent of the direct insured or insureds, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution of the obligations of the ceding insurer to the payees.

(b) No credit shall be allowed, as an admitted asset or as a deduction from liability, to any ceding insurer for reinsurance, unless the reinsurance is documented by a policy, certificate, treaty, or other form of agreement



that is properly executed by an authorized officer of the assuming insurer. If the reinsurance is ceded through an underwriting manager or agent, the manager or agent shall provide to the domestic ceding insurer evidence of the manager or agent's authority to assume reinsurance for and on behalf of the assuming insurer. The evidence shall consist of either an acceptable letter of authority executed by an authorized officer of the assuming insurer or a copy of the actual agency agreement between the underwriting manager or agent and the assuming insurer; and the evidence shall be specific as to the classes of business within the authority and as to the term of the authority. If there is any conflict between this subsection and Article 9 of this Chapter, the provisions of Article 9 govern."

**Sec. 5.** G. S. 58-12-30 reads as rewritten:

*"§ 58-12-30. Hearings.*

Upon (i) notification to an insurer by the Commissioner of an adjusted risk-based capital report; or (ii) notification to an insurer by the Commissioner that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, and the notification constitutes a regulatory action level event with respect to the insurer; or (iii) notification to any insurer by the Commissioner that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its risk-based capital plan or revised risk-based capital plan; or (iv) notification to an insurer by the Commissioner of a ~~Corrective Order~~ corrective order with respect to the insurer, the insurer has a right to a confidential hearing, at which the insurer may challenge any determination or action by the Commissioner. The insurer shall notify the Commissioner of its request for a hearing within five days after the notification by the Commissioner under this section. Upon receipt of the insurer's request for a hearing, the Commissioner shall set a date for the ~~hearing, which~~ hearing; the date shall be no less than 10 days nor more than 30 days after the date of the insurer's request."

**Sec. 6.** G.S. 58-16-5(3) is repealed.

**Sec. 7.** Article 16 of Chapter 58 of the General Statutes is amended by adding a new section to read:

*"§ 58-16-6. Conditions of continued licensure.*

In order for a foreign insurance company to continue to be licensed, it shall report any changes in the documents filed under G.S. 58-16-5(1) or G.S. 58-16-5(5), maintain the amounts of capital and surplus specified in G.S. 58-16-5(2), and remain in substantial compliance with the statutes listed in G.S. 58-16-5(6) and G.S. 58-16-5(7)."

**Sec. 8.** G.S. 58-16-30 reads as rewritten:

*"§ 58-16-30. Service of legal process upon Commissioner.*

As an alternative to service of legal process under the provisions of Rule 4 of the Rules of Civil Procedure, G.S. 1A-1, Rule 4, the service of such process upon any insurance company or any foreign or alien entity licensed or admitted and authorized to do business in this State under the provisions of Articles 1 through 64 of this Chapter may be made by the sheriff or any other person delivering and leaving a copy of such the process in the office



of the Commissioner with a deputy or any other person duly appointed by the Commissioner for ~~such purpose that purpose~~; or acceptance of service of ~~such~~ the process may be made by the Commissioner or ~~such~~ a duly appointed ~~deputy, deputy or person~~. Service may also be made by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Commissioner. As a condition precedent to a valid service of process under this section, the party obtaining such service shall pay to the Commissioner at the time of service or acceptance of service the sum of ten dollars (\$10.00), which ~~such~~ the party shall recover as part of the taxable costs if ~~he~~ the party prevails in ~~his~~ the action."

**Sec. 9.** G.S. 58-19-5(2) reads as rewritten:

"(2) 'Control', including the terms 'controlling', 'controlled by', and 'under common control with', means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or ~~otherwise, unless the power is the result of an official position with or corporate office held by the person, otherwise~~. Control is presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by G.S. 58-19-25(j) that control does not exist in fact. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect."

**Sec. 10.** G.S. 58-19-5(5) reads as rewritten:

"(5) 'Person' means an individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert. ~~'Person' does not include any joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.~~"

**Sec. 11.** G.S. 58-19-15(a) reads as rewritten:

"(a) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer, if, after the consummation thereof, ~~such~~ the person would, directly or indirectly (or by conversion or by exercise of any right to acquire), be in control of ~~such~~ the insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless ~~such~~ the offer, request, invitation, agreement, or acquisition is conditioned upon the approval of the Commissioner pursuant to under this section. No such merger or other acquisition of control ~~shall be~~ is effective

until a statement containing the information required by this section has been filed with the Commissioner and all other provisions of this section have been complied with and the merger or acquisition of control has been approved by the Commissioner ~~pursuant to~~ under this section. The statement containing the information required by this section shall also be filed with the domestic insurer ~~at the time when~~ when it is filed with the Commissioner.

(a1) For the purposes of this section a 'domestic insurer' includes any person controlling a domestic insurer. Further, for the purposes of this section, 'person' does not include any securities broker holding, in the usual and customary broker's function, less than twenty percent (20%) of the voting securities of an insurance company or of any person that controls an insurance company."

**Sec. 12.** G.S. 58-19-15 is further amended by adding two new subsections to read:

"(a2) Any acquisition of control of a domestic insurer must be completed not later than 90 days after the date of the Commissioner's order approving the acquisition under this section, unless the Commissioner grants an extension in writing on a showing of good cause for the delay. Any increase in a company's capital and surplus required under this Article as a result of the change of control of a domestic insurer must be completed not later than 90 days after the date of the Commissioner's order approving the change of control and before the company writes any new insurance business.

(a3) If the deadlines for completion in subsection (a2) of this section are not met, the person seeking to acquire control of the domestic insurer must resubmit the statement required by subsection (b) of this section, and the Commissioner may reconsider approval of acquisition of control under this section."

**Sec. 13.** G.S. 58-30-180(b)(1) reads as rewritten:

"(1) Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within the priorities established in G.S. 58-30-220(1) and ~~(2); (4);~~ (4);."

**Sec. 14.** G.S. 58-30-220 reads as rewritten:

*"§ 58-30-220. Priority of distribution.*

The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds shall be retained for payment before the members of the next class receive any payment. No subcategories shall be established within the categories in a class. The order of distribution of claims shall be:

- (1) ~~Claims for cost of~~ The receiver's expenses for the administration and conservation of assets of the insurer.
- (2) ~~Compensation actually owing to employees other than officers of the insurer for services rendered within three months prior to the commencement of a delinquency proceeding against the insurer under this Article, but not exceeding one thousand dollars (\$1,000) for each employee. In the discretion of the Commissioner, this compensation may be paid as soon as~~

- ~~practicable after the proceeding has been commenced. This priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of those employees.~~
- (3) ~~Claims or portions of claims for benefits under policies and for losses incurred, including claims of third parties under liability policies; claims for unearned premiums; claims for funds or consideration held under funding agreements, as defined in G.S. 58-7-16; claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values; and claims of domestic and foreign guaranty associations; associations, including claims for the reasonable administrative expenses of domestic and foreign guaranty associations; but excluding claims of insurance pools, underwriting associations, or those arising out of reinsurance agreements, claims of other insurers for subrogation, and claims of insurers for payments and settlements under uninsured and underinsured motorist coverages.~~
  - (3) Claims of the federal or any state or local government or taxing authority, including claims for taxes.
  - (4) ~~Claims for unearned premiums. Compensation actually owing to employees other than officers of the insurer for services rendered within three months before the commencement of a delinquency proceeding against the insurer under this Article, but not exceeding one thousand dollars (\$1,000) for each employee. In the discretion of the Commissioner, this compensation may be paid as soon as practicable after the proceeding has been commenced. This priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of those employees.~~
  - (5) Claims of general creditors, including claims of insurance pools, underwriting associations, or those arising out of reinsurance agreements; claims of other insurers for subrogation; and claims of insurers for payments and settlements under uninsured and underinsured motorist coverages."

**Sec. 15.** Article 31 of Chapter 58 of the General Statutes is amended by adding a new section to read:

*"§ 58-31-52. State motor vehicle safety program.*

(a) Findings, Policy, and Purpose. -- Motor vehicle accidents exact a terrible toll of human tragedy and suffering as well as national resources within the United States. The same is true, on a smaller scale, within North Carolina State government. Every year State employees or members of the general public are killed or injured, and a significant portion of the State's financial resources is expended as a direct result of accidents involving State-owned vehicles. Accordingly, it is North Carolina policy that the State-owned motor vehicle fleet and vehicles used on behalf of the State be operated and maintained in such a manner as to minimize deaths, injuries, and costs. The purpose of this section is to direct the Commissioner of Insurance to develop a program to provide policy, requirements, procedures, technical information, and standards for administering a State vehicle safety program which will apply to all State

personnel involved in the administration and operation of vehicles on behalf of the State.

(b) The Commissioner shall develop and adopt a State motor vehicle safety program to assure that State-owned motor vehicles are operated and maintained in a safe manner.

(c) In developing the program, the Commissioner shall include the following:

- (1) Basic criteria concerning qualifications, screening, and education of drivers.
- (2) Required and prohibited driving practices.
- (3) Safety maintenance requirements.
- (4) Accident reporting and review procedures.

(d) The requirements and procedures established under the program apply to all agencies and persons operating vehicles on behalf of the State, unless specifically exempted by the Commissioner. Agencies may adopt more stringent requirements and procedures than those adopted by the Commissioner under this section. The administration of the program in each agency is the responsibility of each agency head or that person's designee.

(e) The provisions of Chapter 150B of the General Statutes do not apply to the program developed and adopted under this section."

**Sec. 16.** G.S. 58-33-25(e) reads as rewritten:

"(e) A limited representative may receive qualification for one or more licenses without examination for the following kinds of insurance:

- (1), (2) Repealed by Session Laws 1989, c. 485, s. 19.
- (3) Credit Life, Accident and ~~Health~~ Health.
- (4) Credit, as specified in ~~G.S. 58-7-15(17)~~ G.S. 58-7-15(17).
- (5) Travel Accident and ~~Baggage~~ Baggage.
- (6) Motor ~~Club~~ Club.
- (7) Dental ~~Services~~ Services.
- (8) Credit Property Insurance and Single Interest Automobile Physical Damage Insurance when either is made in connection with a ~~loan~~ loan.
- (9) Bail bonds executed or countersigned by surety bondsmen under Article 71 of this ~~Chapter~~ Chapter.
- (10) Credit unemployment.
- (11) Vehicle service agreements and mechanical breakdown insurance.
- (12) ~~Prerangement~~ insurance, as defined in G.S. 58-60-35(a)(2), when offered or sold by a preneed sales licensee licensed under Article 13D of Chapter 90 of the General Statutes."

**Sec. 17.** Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-33-132. Qualifications of instructors.

(a) The Commissioner may adopt rules to establish requisite qualifications for and issuance, renewal, summary suspension, and termination of provider, presenter, and instructor authority for prelicensing and continuing insurance education courses. During any suspension, the instructor shall not engage in any instruction of prelicensing or continuing insurance education courses prior to an administrative review. No person shall



provide, present, or instruct any course unless that person has been qualified and possesses a certificate of authority from the Commissioner.

(b) The Commissioner may summarily suspend or terminate the authority of an instructor, course provider, or presenter if the course presentation:

- (1) Is determined to be inaccurate; or
- (2) Receives an evaluation of poor from any Department monitor and a majority of attendees responding to Department questionnaires about the presentation."

**Sec. 18.** G.S. 58-36-1(5) reads as rewritten:

- "(5) a. It is the duty of every insurer that writes workers' compensation insurance in this State and is a member of the Bureau, as defined in this section and G.S. 58-36-5 to insure and accept any workers' compensation insurance risk that has been certified to be 'difficult to place' by any fire and casualty insurance agent who is licensed in this State. When any such risk is called to the attention of the Bureau by receipt of an application with an estimated or deposit premium payment and it appears that the risk is in good faith entitled to such coverage, the Bureau will bind coverage for 30 days and will designate a member who must issue a standard workers' compensation policy of insurance that contains the usual and customary provisions found in those policies. Multiple coordinated policies, as defined by the Bureau and approved by the Commissioner, may be used for the issuance of coverage under this subdivision for risks involved in employee leasing agreements. Coverage will be bound at 12:01 A.M. on the first day following the postmark time and date on the envelope in which the application is mailed including the estimated annual or deposit premium, or the expiration of existing coverage, whichever is later. If there should be no postmark, coverage will be effective 12:01 A.M. on the date of receipt by the Bureau unless a later date is requested. Those applications hand delivered to the Bureau will be effective as of 12:01 A.M. of the date following receipt by the Bureau unless a later date is requested. ~~The designated carrier may request of the Bureau certification of the State Department of Labor that the insured is complying with the laws, rules, and regulations of that Department. The certification must be finished within 30 days by the State Department of Labor unless extension of time is granted by agreement between the Bureau and the State Department of Labor.~~ The Bureau will make and adopt such rules as are necessary to carry this section into effect, subject to final approval of the Commissioner. As a prerequisite to the transaction of workers' compensation insurance in this State, every member of the Bureau that writes such insurance must file with the Bureau written authority permitting the Bureau to act in its behalf, as provided in this section, and an agreement



to accept risks that are assigned to the member by the Bureau, as provided in this section.

- b. ~~Upon notice of cancellation or the decision to decline to write or renew a policy of workers' compensation insurance for an employer, the carrier or its agents shall supply the employer with a form, supplied by the Bureau, by which the employer may request the Bureau to list the employer and pertinent information about it among a compendium of such information on~~ The Bureau shall maintain a compendium of employers refused voluntary coverage, which shall be made available by the Bureau to all insurers, licensed agents, and self-insureds' administrators doing business in this State. It shall be stored and indexed to allow access to information by industry, primary classifications of employees, geography, experience modification, and in any other manner the Bureau determines is commercially useful to facilitate voluntary coverage of listed employers. The Bureau shall be immune from civil liability for erroneous information released by the Bureau pursuant to this section, provided that the Bureau acted in good faith and without malicious or willful intent to harm in releasing the erroneous information."

**Sec. 19.** G.S. 58-36-25 reads as rewritten:

"§ 58-36-25. *Appeal of Commissioner's order.*

(a) Any order or decision of the Commissioner shall be subject to judicial review as provided in Article 2 of this Chapter.

(b) Whenever a Bureau rate is held to be unfairly discriminatory or excessive and no longer effective by order of the Commissioner issued under G.S. 58-36-20, the members of the Bureau, in accordance with rules and regulations established and adopted by the governing committee, shall have the option to continue to use such rate for the interim period pending judicial review of such order, provided each such member shall place in escrow account the purportedly unfairly discriminatory or excessive portion of the premium collected during such interim period. Upon a final determination by the Court, or upon a consent agreement or consent order between the Bureau and the Commissioner, the Commissioner shall order the escrowed funds to be distributed appropriately, appropriately, except that individual refunds that are five dollars (\$5.00) or less shall not be required. If refunds are to be made to policyholders, the Commissioner shall order that the members of the Bureau refund the difference between the total premium per policy using the rate levels finally determined and the total premium per policy collected during the interim period pending judicial review, except that refund amounts that are five dollars (\$5.00) or less per policy shall not be required. The court may also require that purportedly excess premiums resulting from an adjustment of premiums ordered pursuant to G.S. 58-36-20(b) be placed in such escrow account pending judicial review. If refunds made to policyholders are ordered under this subsection, the amounts refunded shall bear interest at the rate determined under this subsection. ~~That rate shall be the average of the prime rates of the four largest banking institutions domiciled in this State, plus three~~

~~percent (3%), as of the effective date of the filing, to be computed by the Commissioner. That rate, to be computed by the Bureau, shall be the average of the prime rates on the effective date of the filing and each anniversary of that date occurring prior to the date of the Commissioner's order requiring refunds, with the prime rate on each of the dates being the average of the prime rates of the four largest banking institutions domiciled in this State as of that date, plus three percent (3%)."~~

**Sec. 20.** G.S. 58-36-30(b) reads as rewritten:

"(b) A rate in excess of that promulgated by the Bureau may be charged on any specific risk provided such higher rate is charged with the approval of the Commissioner and with the knowledge and written consent of the insured. This subsection may be used to provide motor vehicle liability coverage limits above those required under Article 9A of Chapter 20 of the General Statutes and above those cedable to the Facility under Article 37 of this Chapter to persons whose personal excess liability insurance policies require that they maintain specific higher liability coverage limits. All data filed with the Commissioner under this subsection are proprietary and confidential and are not public records under G.S. 132-1 or G.S. 58-2-100."

**Sec. 21.** G.S. 58-36-30(c) reads as rewritten:

"(c) Any deviation with respect to workers' compensation and employers' liability insurance written in connection therewith as filed under subsection (a) of this section shall apply uniformly to all classifications. Any approved rate under subsection (b) of this section with respect to workers' compensation and employers' liability insurance written in connection therewith shall be furnished to the Bureau."

**Sec. 22.** G.S. 58-36-85(e) reads as rewritten:

"(e) Administrative Review. -- When the Department receives a written request to review a termination, it must investigate and determine the reason for the termination. The Department shall ~~enter an order for~~ issue a letter requiring one of the following upon completing its review:

- (1) Approval of the termination, if it finds the termination complies with the law.
- (2) Renewal or reinstatement of the policy, if it finds the termination does not comply with the law.
- (3) Renewal or reinstatement of the policy and payment by the insurer of the costs of the Department's review, not to exceed one thousand dollars (\$1,000), if it finds the termination does not comply with the law and the insurer willfully violated this section.

The Department shall mail ~~a copy of the order~~ the letter to the insured and the insurer. An insured or an insurer who disagrees with the determination of the Department in the letter may file a petition for a contested case under Article 3A of Chapter 150B of the General Statutes and the rules adopted by the Commissioner to implement that Article. The petition must be filed within 30 days after receiving the copy of the ~~order~~ letter."

**Sec. 23.** G.S. 58-37-30(b) reads as rewritten:

"(b) It shall be the responsibility of the agent to write the coverage applied for at what he believes to be the appropriate rate level. If coverage is written

at the Facility rate level and the company elects not to cede, the policy shall be rated at the voluntary rate level, a rate under Article 36 of this Chapter. Coverage written at the voluntary rate level which a rate under Article 36 of this Chapter that is not acceptable to the company must either be placed with another company or rated at the Facility rate level by the agent."

**Sec. 24.** G.S. 58-37-40(e) reads as rewritten:

"(e) Upon approval of the Commissioner of the plan so submitted or promulgation of a plan deemed approved by the Commissioner, all insurance companies licensed to write motor vehicle insurance in this State or any component thereof as a prerequisite to further engaging in writing such the insurance shall formally subscribe to and participate in the plan so approved.

The plan of operation shall provide for, among other matters, (i) the establishment of necessary facilities, facilities; (ii) the management of the Facility, Facility; (iii) the preliminary assessment of all members for initial expenses necessary to commence operations, operations; (iv) the assessment of members if necessary to defray losses and expenses, expenses; (v) the distribution of gains to defray losses incurred since the effective date hereof and then to persons reinsured by the Facility, the recoupment of losses sustained by the Facility, September 1, 1977; (vi) the distribution of gains by credit or reduction of recoupment or allocation surcharges to policies subject to recoupment or allocation surcharges pursuant to this Article (the Facility may apportion the distribution of gains among the coverages eligible for cession pursuant to this Article); (vii) the recoupment or allocation of losses sustained by the Facility since September 1, 1977, pursuant to this Article, which losses may be recouped by equitable pro rata assessment of member companies, companies; (viii) the standard amount (one hundred percent (100%) or any equitable lesser amount) of coverage afforded on eligible risks which a member company may cede to the Facility, Facility; and (ix) the procedure by which reinsurance shall be accepted by the Facility, and Facility. The plan shall further provide that:

- (1) Members of the Board of Governors shall receive reimbursement from the Facility for their actual and necessary expenses incurred on Facility business, en route to perform Facility business, and while returning from Facility business plus a per diem allowance of twenty-five dollars (\$25.00) a day which may be waived.
- (2) In order to obtain a transfer of business to the Facility effective when the binder or policy or renewal thereof first becomes effective, the company must within 30 days of the binding or policy effective date notify the Facility of the identification of the insured, the coverage and limits afforded, classification data, and premium. The Facility shall accept risks at other times on receipt of necessary information, but such acceptance shall not be retroactive. The Facility shall accept renewal business after the member on underwriting review elects to again cede the business."

**Sec. 25.** G.S. 58-40-10(2) reads as rewritten:

- "(2) 'Nonfleet' motor vehicle means a motor vehicle not eligible for classification as a fleet vehicle for the reason that the motor vehicle is is:

- a. ~~one~~ One of four or less fewer motor vehicles owned or hired under a long-term contract by ~~the~~ a policy named ~~insured, insured; or~~
- b. One of five or more private passenger motor vehicles owned or hired under a long-term contract:
  - 1. By an individual who is a policy named insured;
  - 2. Jointly by two or more individuals who are policy named insureds and are residents in the same household; or
  - 3. Jointly by two or more individuals who are policy named insureds and are related by blood, marriage, or adoption."

Sec. 26. G.S. 58-42-55 reads as rewritten:

"§ 58-42-55. *Expiration.*

This Article shall expire on July 1, 1995, July 1, 1997."

Sec. 27. G.S. 58-44-10 is repealed.

Sec. 28. G.S. 58-45-35(b) reads as rewritten:

"(b) If the Association determines that the property is insurable and that there is no unpaid premium due from the applicant for prior insurance on the property, the Association, upon receipt of the premium, or part of the premium, as is prescribed in the plan of operation, shall cause to be issued a policy of essential property insurance and shall offer additional extended coverage, optional perils endorsements, crime insurance, separate policies of windstorm and hail insurance, or their successor forms of coverage, for a term of one ~~year, year or three years.~~ Any policy issued under the ~~provisions of this section shall be renewed annually, renewed, upon application, so as long as the property meets the definition of "insurable property" set forth in G.S. 58-45-5(5), is insurable property."~~

Sec. 29. Article 50 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-50-149. *Limit on cessions to the Reinsurance Pool.*

In addition to any individual or group previously reinsured in accordance with G.S. 58-50-150(g)(1), the Pool shall only reinsure a health benefit plan issued or delivered for original issue by a reinsuring carrier on or after October 1, 1995, if the health benefit plan provides coverage to a small employer with no more than 25 eligible employees, including self-employed individuals."

Sec. 30. G.S. 58-53-60 reads as rewritten:

"§ 58-53-60. *Premium.*

(a) The premium for the converted ~~policy policy~~ policy or group conversion trust certificate shall be determined in accordance with the insurer's table of premium rates applicable to the age and class of risk to be covered under that policy and to the type and amount of insurance provided.

(b) All insurers licensed to do business in this State, who issue conversion ~~policies policies~~ policies or group conversion trust certificates under this Part, ~~shall~~ have the right to increase that element of the premium that applies to hospital room and board benefit increases provided for in G.S. 58-53-95(5) by an amount proportionate to the increase promulgated by the Commissioner. Such premium increases shall be filed with the Commissioner.



(c) All premium rates and adjustments to premium rates for converted ~~policies~~ policies or group conversion trust certificates shall be reasonable and must be filed with and approved by the Commissioner prior to use. A premium rate shall be deemed to be reasonable if ~~it can be demonstrated by~~ the insurer demonstrates that the premium charged is expected to produce an incurred loss ratio to earned premiums of not less than sixty percent (60%) for all ~~individual~~ policies or group conversion trust certificates providing similar benefits offered and issued by the insurer. If an insurer experiences an incurred loss ratio of greater than eighty percent (80%) for all such policies, it shall be deemed reasonable for that insurer to increase premium rates to a level that will produce a prospective incurred loss ratio of no greater than eighty percent (80%), and the insurer shall file such new rates with the Commissioner not more often than once a year."

**Sec. 31.** (a) Article 58 of Chapter 58 of the General Statutes is further amended by adding the following new sections to read:

"§ 58-58-22. Individual policy standard provisions.

No policy of individual life insurance shall be delivered in this State unless it contains in substance the following provisions, or provisions that in the Commissioner's opinion are more favorable to the person insured:

- (1) Grace period. -- A provision that the insured is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force. The policy may provide that if a claim arises under the policy during the grace period, the amount of any premium due or overdue may be deducted from any amount payable under the policy in settlement.
- (2) Incontestability. -- A provision that the validity of the policy shall not be contested, except for nonpayment of premium, once it has been in force for two years after its date of issue; and that no statement made by any person insured under the policy about that person's insurability shall be used during the person's lifetime to contest the validity of the policy after the insurance has been in force for two years.
- (3) Misstatement of age or gender. -- A provision specifying an equitable adjustment of premiums or benefits, or both, to be made if the age or gender of the person insured has been misstated; the provision to contain a clear statement of the method of adjustment to be used.
- (4) Suicide. -- A provision that may not limit payment of benefits for a period more than two years after the date of issue of the policy because of suicide and that provides for at least the return of premiums paid on the policy if there is suicide during the two-year period.
- (5) Reinstatement. -- A provision that, unless the policy has been surrendered for its cash surrender value, or its cash surrender value has been exhausted, the policy will be reinstated at any time within five years after the date of premium default upon written application therefor, the production of evidence of insurability satisfactory to the insurer, the payment of all overdue premiums,



and the payment of reinstatement of any other indebtedness to the insurer upon the policy, all with interest at the rate specified.

"§ 58-58-23. Standard provisions for annuity and pure endowment contracts.

No annuity or pure endowment contract, except a reversionary or survivorship annuity and except a group annuity contract, shall be delivered or issued for delivery in this State unless it contains in substance the following provisions or provisions that in the opinion of the Commissioner are more favorable to the holders of the contracts:

- (1) Grace period. -- A provision for a grace period of not less than 31 days within which any stipulated payment to the insurer falling due after the first payment may be made. During the grace period, the contract shall continue in full force. If a claim arises under the contract because of death before the expiration of the grace period and before the overdue payment to the insurer is made, the amount of the payments, with interest on any overdue payments, may be deducted from any amount payable under the contract.
- (2) Incontestability. -- If any statements are required as a condition of issue, there shall be a provision that the contract shall be incontestable during the lifetime of the person or of each of the persons as to whom the statements are required after it has been in force for a period of two years after its date of issue, except for nonpayment of stipulated payments to the insurer.
- (3) Misstatements of age or gender. -- A provision that if the age or gender of any person upon whose life the contract is made has been misstated, the amount payable or benefits accruing under the contract shall be such as the stipulated payment or payments to the insurer would have been according to the correct age or gender; and if the insurer makes an overpayment because of the misstatement, that amount with interest at the rate specified in the contract may be charged against any current or subsequent payment by the insurer under the contract.
- (4) Reinstatement. -- A provision that the contract may be reinstated at any time within one year after a default in making stipulated payments to the insurer, unless the cash surrender value has been paid; but all overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated with interest at a rate specified in the contract. When applicable, the insurer may also require evidence of insurability satisfactory to the insurer."

(b) Article 58 of Chapter 58 of the General Statutes is further amended by adding a new section to read:

"§ 58-58-42. Viatical settlements.

(a) Definitions. -- As used in this section:

- (1) 'Broker' means a person who, for consideration and on behalf of another, offers or advertises the availability of viatical settlements, introduces viators to providers, or offers or attempts to negotiate viatical settlement contracts between a viator and one or more providers; it does not mean an attorney, accountant, or financial

planner retained to represent a viator and whose compensation is not paid by a provider.

(2) 'Policy' means an individual life insurance policy or a certificate under a group life insurance policy.

(3) 'Provider' means a person who enters into a viatical settlement contract with a viator. 'Provider' does not mean:

a. A licensed lending institution that takes an assignment of a policy as collateral for a loan.

b. The issuer of a policy providing accelerated benefits under 11 NCAC 12.1200.

c. A natural person who enters into no more than one agreement in a calendar year for the transfer of a policy for any value less than the expected death benefit.

(4) 'Viatical settlement contract' or 'contract' means a written agreement entered into between a provider and a viator that establishes the terms under which the provider will pay consideration that is less than the expected death benefit of the viator's policy in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the policy to the provider.

(5) 'Viator' means the owner or holder of a policy who has a catastrophic or life-threatening illness or condition and who enters into a viatical settlement contract.

(b) Registration. -- No person may act as a provider or enter into or solicit a contract without first registering with the Commissioner. The applicant shall register on a form prescribed by the Commissioner. The Commissioner may require the applicant to disclose fully the identity of all stockholders, partners, officers, and employees. The Commissioner may refuse registration of any partnership, corporation, or other business entity if not satisfied that any officer, employee, stockholder, or partner who may materially influence the applicant's conduct meets the standards of this section. Registration of a partnership, corporation, or other business entity authorizes all members, officers, and designated employees to act as providers under the registration; all of those persons must be named in the application and any supplements to the application. Before any registration is complete, the Commissioner shall investigate each applicant and may register the applicant if the Commissioner finds that the applicant:

(1) Has provided a detailed plan of operation.

(2) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for.

(3) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied.

(4) If a corporation, is incorporated under the laws of this State or is a foreign corporation authorized to transact business in this State.

No registration is complete for any nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the Commissioner or the applicant has filed with the Commissioner the applicant's written irrevocable consent that any action against the applicant

may be commenced against the applicant by service of process on the Commissioner.

(c) Enforcement. -- The Commissioner may issue a cease and desist order upon any provider if the Commissioner finds that:

- (1) There was any misrepresentation in the application for registration;
- (2) The provider has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a provider;
- (3) The provider demonstrates a pattern of unreasonable payments to policy owners;
- (4) The provider has been convicted of a felony or any misdemeanor of which criminal fraud is an element; or
- (5) The provider has violated a provision of this section.

(d) Approval of Contracts. -- No provider may use any viatical settlement contract in this State unless it has been filed with and approved by the Commissioner. Any contract form filed with the Commissioner is deemed to be approved if it has not been disapproved within 90 days after the filing. The Commissioner shall disapprove a contract form if, in the Commissioner's opinion, any provision of the contract is unreasonable, contrary to the public interest, or otherwise misleading or unfair to the policy owner.

(e) Reporting Requirements. -- Each provider shall file with the Commissioner on or before March 1 of each year a statement containing the information required by the rules adopted by the Commissioner.

(f) Examination. -- The Commissioner may, when the Commissioner deems it to be reasonably necessary to protect the public interest, examine the business and affairs of any provider or applicant for registration. The Commissioner may order any provider or applicant to produce records, books, files, or other information that is necessary to ascertain whether or not the provider or applicant is acting or has acted in violation of this section or otherwise contrary to the public interest. The provider or applicant shall pay the expenses incurred in conducting an examination. Names and individual identification data for all viators are confidential and shall not be disclosed by the Commissioner. The provider shall maintain records of all transactions of contracts and make the records available to the Commissioner for inspection during reasonable business hours.

(g) Disclosure. -- A provider shall disclose the following information to the viator no later than the date the contract is signed by all parties:

- (1) Options other than the contract for a person with a catastrophic or life-threatening illness, including, but not limited to, accelerated benefits offered by the issuer of the policy.
- (2) The fact that some or all of the contract consideration may be taxable, and that assistance should be sought from a personal tax advisor.
- (3) The fact that the contract consideration could be subject to the claims of creditors.
- (4) The fact that receipt of the contract consideration may adversely affect the viator's eligibility for Medicaid or other government

benefits or entitlements; and that advice should be obtained from the appropriate government agencies.

(5) The viator's right to rescind a contract within 30 days after the date it is executed by all parties or within 15 days after the receipt of the contract consideration by the viator, whichever is less, as provided in subsection (h) of this section.

(6) The date by which the contract consideration will be available to the viator and the source of the consideration.

(h) General Rules. -- A provider entering into a contract with a viator shall first obtain:

(1) A written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence.

(2) A witnessed document in which the viator (i) consents to the contract, (ii) acknowledges the catastrophic or life-threatening illness, (iii) represents that the viator has a full and complete understanding of the contract, (iv) represents that the viator has a full and complete understanding of the benefits of the policy, and (v) releases the medical records and acknowledges that the contract has been entered into freely and voluntarily.

All medical information solicited or obtained by any provider is subject to all State laws relating to confidentiality of medical information. All contracts entered into in this State shall contain an unconditional refund provision for at least 30 days after the date of the contract, or 15 days after the receipt of the viatical settlement proceeds, whichever is less.

(i) Contract Consideration. -- Immediately upon receipt from the viator of documents to effect the transfer of the policy, the provider shall direct the contract consideration to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the Commissioner, pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall transfer the proceeds that are due to the viator immediately upon receipt of acknowledgment of the transfer from the insurer. Failure to tender the contract consideration by the date disclosed to the viator renders the contract null and void.

(j) Authority to Adopt Standards. -- The Commissioner may:

(1) Adopt rules to implement this section.

(2) Establish standards for evaluating reasonableness of payments under contracts. This authority includes regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a policy.

(3) Establish appropriate registration and other regulatory requirements for brokers.

(4) Require a bond.

(k) Unfair Trade Practices. -- A violation of this section is considered an unfair trade practice under Article 63 of this Chapter."

Sec. 32. G.S. 58-60-35 reads as rewritten:

"§ 58-60-35. Disclosure of prearrangement insurance policy provisions.

(a) As used in this section:



- (1) 'Prearrangement' means any contract, agreement, or mutual understanding, or any series or combination of contracts, agreements or mutual understandings, whether funded by trust deposits or prearrangement insurance policies, or any combination thereof, which has for a purpose the furnishing or performance of specific funeral services, or the furnishing or delivery of specific personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, mausoleum, grave marker or monument.
  - (2) 'Prearrangement insurance policy' means a life insurance policy, annuity contract, or other insurance contract, or any series of contracts or agreements in any form or manner, issued on a group or individual basis by an insurance company authorized by law to do business in this State, which, whether by assignment or otherwise, has for a its sole purpose the funding of a specific preneed funeral contract or a specific insurance-funded funeral or burial prearrangement, the insured being the person for whose service the funds were paid.
  - (b) The following information shall be adequately disclosed by the insurance agent or limited representative at the time an application is made, prior to accepting the applicant's initial premium, for a prearrangement insurance policy:
    - (1) The fact that a prearrangement insurance policy is involved or being used to fund a prearrangement;
    - (2) The nature of the relationship among the insurance agent or agents, limited representative, the provider of the funeral or cemetery merchandise or services, the administrator, and any other person;
    - (3) The relationship of the prearrangement insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;
    - (4) The effect on the prearrangement of (i) any changes in the prearrangement insurance policy, including but not limited to, changes in the assignment, beneficiary designation, or use of the policy proceeds; (ii) any penalties to be incurred by the insured as a result of failure to make premium payments; and (iii) any penalties to be incurred or monies to be received as a result of cancellation or surrender of the prearrangement insurance policy;
    - (5) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the policy proceeds and the amount actually needed to fund the prearrangement; and
    - (6) Any penalties or restrictions, including geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services, or the prearrangement guarantee."
- Sec. 33. G.S. 58-81-1 is repealed.



**Sec. 33.1.** G.S. 20-109.1(a), as rewritten by Chapter 50 of the Session Laws of 1995, reads as rewritten:

"(a) Option to Keep Title. -- When a vehicle is damaged to the extent that it becomes a salvage vehicle and the owner submits a claim for the damages to ~~the insurer of the vehicle~~, an insurer, the insurer must determine whether the owner wants to keep the vehicle after payment of the claim. If the owner does not want to keep the vehicle after payment of the claim, the procedures in subsection (b) of this section apply. If the owner wants to keep the vehicle after payment of the claim, the procedures in subsection (c) of this section apply."

**Sec. 34.** G.S. 95-111.12(a) reads as rewritten:

"(a) No owner shall operate a device subject to the provisions of this Article, unless at the time, there is in existence a contract of insurance providing coverage of not less than one million dollars (\$1,000,000) per occurrence against liability for injury to persons or property arising out of the operation or use of such device or there is in existence a contract of insurance providing coverage of not less than five hundred thousand dollars (\$500,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the amusement devices if the annual gross volume of the devices does not exceed two hundred seventy-five thousand dollars (\$275,000); provided waterslides shall not be required to be insured as ~~herein provided in this subsection~~ for an amount in excess of one hundred thousand dollars (\$100,000) per occurrence. The insurance contract to be provided must be by any insurer or surety that is acceptable to the North Carolina Insurance Commissioner and authorized to transact business in this State: provided, however, that insurance for waterslides may be purchased under Article 21 of Chapter 58 of the General Statutes or under G.S. 58-28-5(b).

In lieu of a contract for insurance or surety, a waterslide owner may alternately comply with this subsection by furnishing to the Commissioner satisfactory proof of financial ability to directly pay one hundred thousand dollars (\$100,000) per occurrence in liability for injury to persons or property arising out of the operation or use of the waterslide. The Commissioner may require the deposit of a security, indemnity, bond, or irrevocable letter of credit to secure the payment of any liability incurred. The Commissioner may consult with the Commissioner of Insurance, the Commissioner of Banks, the Secretary of Commerce, or the State Treasurer in order to determine if any security, indemnity, bond, or irrevocable letter of credit filed under this subsection is acceptable proof of financial responsibility."

**Sec. 35.** G.S. 97-2(2) reads as rewritten:

"(2) Employee. -- The term 'employee' means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer, and as relating to those so employed by the State, the term 'employee' shall include all officers and

employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term 'employee' shall include all officers and employees thereof, including such as are elected by the people. The term 'employee' shall include members of the North Carolina national guard, except when called into the service of the United States, and members of the North Carolina State guard, and members of these organizations shall be entitled to compensation for injuries arising out of and in the course of the performance of their duties at drill, in camp, or on special duty under orders of the Governor. The term 'employee' shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment, and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee as herein defined of a municipality, county, or of the State of North Carolina while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation specifically excluding such executive officer in such contract of insurance and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term employee shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State approved mission pursuant to Article 11 of Chapter 143B.

Employee shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business or any member of a limited liability company ~~whose employees are eligible for benefits under this Article~~ may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article."

**Sec. 36.** G.S. 97-19 reads as rewritten:

"§ 97-19. *Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability.*

Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without requiring from such subcontractor or obtaining from the Industrial Commission a certificate, issued by a workers' compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance to a self-insured subcontractor, stating that such subcontractor has complied with G.S. 97-93 hereof, shall be liable, irrespective of whether such subcontractor has regularly in service fewer than three employees in the same business within this State, to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of any such subcontractor, any principal or partner of such subcontractor or any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract. If the principal contractor, intermediate contractor or

subcontractor shall obtain such certificate at the time of subletting such contract to subcontractor, he shall not thereafter be held liable to any such subcontractor, any principal or partner of such subcontractor, or any employee of such subcontractor for compensation or other benefits under this Article. ~~If the subcontractor has no employees and waives in writing his right to coverage under this section, the principal contractor, intermediate contractor, or subcontractor subletting the contract shall not thereafter be held liable for compensation or other benefits under this Article to said subcontractor. Subcontractors who have no employees are not required to comply with G.S. 97-93.~~

Any principal contractor, intermediate contractor, or subcontractor paying compensation or other benefits under this Article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who independently of such provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

The principal or owner may insure any or all of his contractors and their employees in a blanket policy, and when so insured such contractor's employees will be entitled to compensation benefits regardless of whether the relationship of employer and employee exists between the principal and the contractor."

Sec. 37. Reserved.

Sec. 38. Section 208(d) of Chapter 757 of the 1985 Session Laws, as amended by Section 1 of Chapter 480 of the 1991 Session Laws, is repealed.

Sec. 39. (a) Article 11 of Chapter 131E of the General Statutes (G.S. 131E-210 through G.S. 131E-213) is repealed.

(b) Chapter 131E of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 11A.

"Medical Care Data.

"§ 131E-214. *Title and purpose.*

(a) This Article is the Medical Care Data Act.

(b) The General Assembly finds that, as a result of rising medical care costs and the concern expressed by medical care providers, medical care consumers, third-party payors, and health care planners involved with planning for the provision of medical care, there is an urgent and continuing need to understand patterns and trends in the use and cost of medical care services in this State. The purposes of this Article are as follows:

- (1) To ensure that there is an information base containing medical care data from throughout the State that can be used to improve the appropriate and efficient use of medical care services and maintain an acceptable quality of health care services in this State.
- (2) To ensure that the necessary medical care data is available to university researchers, State public policymakers, and all other interested persons to improve the decision-making process



regarding access, identified needs, patterns of medical care, charges, and use of appropriate medical care services.

- (3) To ensure that a data processor receiving data under this Article protects patient confidentiality.

These purposes are to be accomplished by requiring that all hospitals and freestanding ambulatory surgical facilities submit information necessary for a review and comparison of charges, utilization patterns, and quality of medical services to a data processor that maintains a statewide database of medical care data and that makes medical care data available to interested persons, including medical care providers, third-party payors, medical care consumers, and health care planners.

"§ 131E-214.1. Definitions.

As used in this Article:

- (1) 'Division' means the Division of Facility Services of the Department of Human Resources.
- (2) 'Freestanding ambulatory surgical facility' means a facility licensed under Part D of Article 6 of this Chapter.
- (3) 'Hospital' means a facility licensed under Article 5 of this Chapter or Article 2 of Chapter 122C of the General Statutes, but does not include the following:
  - a. A facility with all of its beds designated for medical type 'LTC' (long-term care).
  - b. A facility with the majority of its beds designated for medical type 'PSY-3' (mental retardation).
  - c. A facility operated by the North Carolina Department of Correction.
- (4) 'Patient data' means data that includes a patient's age, sex, zip code, third-party coverage, principal and other diagnosis, date of admission, procedure and discharge date, principal and other procedures, total charges and components of the total charges, attending physician identification number, and hospital or freestanding ambulatory surgical facility identification number.
- (5) 'Patient identifying information' means the name, address, social security number, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a health care provider if that number does not consist of or contain numbers, including social security or drivers license numbers, that could be used to identify a patient with reasonable accuracy and speed from sources external to the health care provider.
- (6) 'Statewide data processor' means a data processor certified by the Division as capable of complying with the requirements of G.S. 131E-214.4. The Division may deny, suspend, or revoke a certificate, in accordance with Chapter 150B of the General Statutes, if the statewide data processor does not comply with or is not capable of complying with the requirements of G.S. 131E-214.4. The Division is authorized to promulgate rules



concerning the receipt, consideration, and limitation of a certificate applied for or issued under this Article.

"§ 131E-214.2. Data submission required.

Except as prohibited by federal law or regulation, each hospital and freestanding ambulatory surgical facility shall submit patient data to a statewide data processor within 60 calendar days after the close of each calendar quarter for patients that were discharged or died during that quarter.

"§ 131E-214.3. Patient data not public records.

(a) The following are not public records under Chapter 132 of the General Statutes:

(1) Patient data furnished to and maintained by a statewide data processor pursuant to this Article.

(2) Compilations of patient data prepared for release or dissemination by a statewide data processor pursuant to this Article.

(3) Patient data furnished by a statewide data processor to the State.

(b) Compilations of data under subdivision (a)(3) of this section, prepared for release or dissemination by the State, are public records.

(c) The State shall not allow proprietary information, including patient data, that it receives from a statewide data processor to be used by a person for commercial purposes. The State shall require the person requesting this information to certify that it will not use the information for commercial purposes.

(d) A person is immune from liability for actions arising from the required submission of data under this Article.

"§ 131E-214.4. Statewide data processor.

(a) A statewide data processor shall perform the following duties:

(1) Make available annually to the Division, at no charge, a report that includes a comparison of the 35 most frequently reported charges of hospitals and freestanding ambulatory surgical facilities. The report is a public record and shall be made available to the public in accordance with Chapter 132 of the General Statutes. Publication or broadcast by the news media shall not constitute a resale or use of the data for commercial purposes.

(2) Receive patient data from hospitals and freestanding ambulatory surgical facilities throughout this State.

(3) Compile and maintain a uniform set of data from the patient data submitted.

(4) Analyze the patient data.

(5) Compile reports from the patient data and make the reports available upon request to interested persons at a reasonable charge determined by the data processor.

(6) Ensure that adequate measures are taken to provide system security for all data and information received from hospitals and freestanding ambulatory surgical facilities pursuant to this Article.

(7) Protect the confidentiality of patient records and comply with applicable laws and regulations concerning patient confidentiality, including the confidentiality of patient-identifying information. The data processor shall not disclose patient-identifying

information unless (i) the information was originally submitted by the party requesting disclosure or (ii) the State Health Director requests specific individual records for the purpose of protecting and promoting the public health under Chapter 130A of the General Statutes, and the disclosure is not otherwise prohibited by federal law or regulation. Such records shall be made available to the State Health Director at a reasonable charge. Such records made available to the State Health Director are not public records; the State Health Director shall maintain their confidentiality and shall not make the records available notwithstanding G.S. 130A-374(a)(2).

(b) The Department of Human Resources may take adverse action against a hospital under G.S. 131E-78 or G.S. 122C-24 or against a freestanding ambulatory surgical center under G.S. 131E-148 for a violation of this Article."

(c) G.S. 58-68A-10(5)i. reads as rewritten:

"i. Jointly with the Commission and ~~the North Carolina Medical Database Commission~~, a statewide data processor certified under Article 11A of Chapter 131E of the General Statutes, collect data from all community health plans and sponsor research into health outcomes and practice guidelines."

(d) G.S. 120-123(45) is repealed.

(e) This section does not require a person, corporation, or other entity not previously required to report data to the Medical Database Commission to report data under this section. This section does not require a person, corporation, or other entity to be a statewide data processor.

(f) G.S. 58-6-25(a), as amended by Section 3 of Chapter 360 of the 1995 Session Laws, reads as rewritten:

"(a) Charge Levied. -- There is levied on each insurance company an annual charge ~~to defray the cost of regulating the insurance industry, for the purposes stated in subsection (d) of this section.~~ As used in this section, the term 'insurance company' means a company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except that the term does not include a hospital, medical, or dental service corporation regulated under Articles 65 and 66 of this Chapter. The term 'insurance company' does not include a company regulated under Article 67 of this Chapter. The charge levied in this section is in addition to all other fees and taxes. The charge shall be at a percentage rate of the company's premium tax liability for the taxable year. In determining an insurance company's premium tax liability for a taxable year, additional taxes imposed by G.S. 105-228.8 shall be disregarded.

(g) G.S. 58-6-25(d), as amended by Section 3 of Chapter 360 of the 1995 Session Laws, reads as rewritten:

"(d) Use of Proceeds. -- The Insurance Regulatory Fund is created in the State treasury, under the control of the Office of State Budget and Management. The proceeds of the charge levied in this section and all fees collected under Articles 69 through 71 of this Chapter and under Articles 9 and 9C of Chapter 143 of the General Statutes shall be credited to the Fund. The Fund shall be placed in an interest-bearing account and any interest or

other income derived from the Fund shall be credited to the Fund. Moneys in the Fund may be spent only pursuant to appropriation by the General Assembly and in accordance with the line item budget enacted by the General Assembly. The Fund is subject to the provisions of the Executive Budget Act, except that no unexpended surplus of the Fund shall revert to the General Fund. All money credited to the Fund shall be used to reimburse the General Fund for money appropriated to State agencies to pay the expenses incurred in regulating the insurance ~~industry~~, industry, in certifying statewide data processors under Article 11A of Chapter 131E of the General Statutes, and in purchasing reports of patient data from statewide data processors certified under that Article."

(h) Of the amount appropriated in Chapter 324 of the 1995 Session Laws to the Department of Insurance for the Medical Database Commission, the sum of one hundred fifty thousand dollars (\$150,000) is transferred for fiscal year 1995-96 from the Department of Insurance to the Department of Human Resources, Division of Facility Services, to be used to certify statewide data processors under Article 11A of Chapter 131E of the General Statutes and to purchase reports from statewide data processors certified under that Article. The remainder of the amount appropriated for the Medical Database Commission for that fiscal year that has neither been expended nor encumbered as of September 30, 1995, shall revert to the General Fund.

(i) The provisions of this section are severable. If the court declares a portion of this section unconstitutional or invalid, the remainder of the section is valid.

**Sec. 40.** Reserved.

**Sec. 41.** If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional or invalid.

**Sec. 42.** Sections 4, 7, 13, 14, 20, 23, 25, 27, 28, 29, 30, 31, and 36 and all of Section 39 except subsections (f) and (g) of that section become effective October 1, 1995. Section 33.1 is effective July 1, 1995. Section 3.1 becomes effective October 1, 1995, and applies to health benefit plans issued, renewed, or amended on or after that date. Section 26 is effective June 30, 1995. The remainder of this act is effective upon ratification. Section 34 expires December 31, 1997.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 501

## CHAPTER 518

AN ACT TO REQUIRE THE PARENTS OF A DEPENDENT CHILD WHO IS THE PARENT OF A DEPENDENT CHILD TO CONTRIBUTE TO THE SUPPORT OF THEIR GRANDCHILD.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 50-13.4(b) reads as rewritten:

"(b) In the absence of pleading and proof that the circumstances otherwise warrant, the father and mother shall be primarily liable for the support of a minor ~~child, and child~~. In the absence of pleading and proof that the circumstances otherwise warrant, parents of a minor, unemancipated child who is the custodial or noncustodial parent of a child shall share this primary liability for their grandchild's support with the minor parent, the court determining the proper share, until the minor parent reaches the age of 18 or becomes emancipated. If both the parents of the child requiring support were unemancipated minors at the time of the child's conception, the parents of both minor parents share primary liability for their grandchild's support until both minor parents reach the age of 18 or become emancipated. If only one parent of the child requiring support was an unemancipated minor at the time of the child's conception, the parents of both parents are liable for any arrearages in child support owed by the adult or emancipated parent until the other parent reaches the age of 18 or becomes emancipated. In the absence of pleading and proof that the circumstances otherwise warrant, any other person, agency, organization or institution standing in loco parentis shall be secondarily liable for such support. Such other circumstances may include, but shall not be limited to, the relative ability of all the above-mentioned parties to provide support or the inability of one or more of them to provide support, and the needs and estate of the child. The judge may enter an order requiring any one or more of the above-mentioned parties to provide for the support of the child as may be appropriate in the particular case, and if appropriate the court may authorize the application of any separate estate of the child to his support. However, the judge may not order support to be paid by a person who is not the child's parent or an agency, organization or institution standing in loco parentis absent evidence and a finding that such person, agency, organization or institution has voluntarily assumed the obligation of support in writing. The preceding sentence shall not be construed to prevent any court from ordering the support of a child by an agency of the State or county which agency may be responsible under law for such support."

**Sec. 2.** G.S. 110-129(3) reads as rewritten:

"(3) 'Responsible parent' means the natural or adoptive parent of a dependent child who has the legal duty to support said child and includes the father of ~~an illegitimate child~~, a child born out-of-wedlock and the parents of a dependent child who is the custodial or noncustodial parent of the dependent child requiring support. If both the parents of the child requiring support were unemancipated minors at the time of the child's conception, the parents of both minor parents share primary liability for their grandchild's support until both minor parents reach the age of 18 or become emancipated. If only one parent of the child requiring support was an unemancipated minor at the time of the child's conception, the parents of both parents are liable for any arrearages in child support owed by the adult or emancipated parent until the other parent reaches the age of 18 or becomes emancipated."



**Sec. 3.** This act becomes effective October 1, 1995, and applies to child support assessed for children born on or after that date.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 917

## CHAPTER 519

AN ACT TO ALLOW MEMBERS OF THE SOIL AND WATER CONSERVATION COMMISSION AND SUPERVISORS OF SOIL AND WATER CONSERVATION DISTRICTS TO PARTICIPATE IN THE AGRICULTURE COST SHARE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL AND TO ALLOCATE FUNDS FOR THE AGRICULTURE COST SHARE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL TO BE USED FOR CAPITAL EXPENSES ASSOCIATED WITH DEVELOPING AGRICULTURE WASTE MANAGEMENT MEASURES.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 139-4 reads as rewritten:

"§ 139-4. *Powers and duties of Soil and Water Conservation Commission generally.*

(a) to (c) Repealed by Session Laws 1973, c. 1262, s. 38.

(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

- (1) To offer such assistance as may be appropriate to the supervisors of soil and water conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.
- (2) To keep the supervisors of each of the several districts organized under the provisions of this Chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.
- (3) To coordinate the programs of the several soil and water conservation districts organized hereunder so far as this may be done by advice and consultation.
- (4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this State, in the work of such districts.
- (5) To disseminate information throughout the State concerning the activities and programs of the soil and water conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.
- (6) Upon the filing of a petition signed by all of the district supervisors of any one or more districts requesting a change in the boundary lines of said district or districts, the Commission may change such lines in such manner as in its judgment would



best serve the interests of the occupiers of land in the area affected thereby.

- (7) To receive, review and approve or disapprove applications for planning assistance under the provisions of Public Law 566 (83rd Congress, as amended), and recommend priorities on such applications.
- (8) To supervise and review small watershed work plans pursuant to G.S. 139-41.2 and 139-47.
- (9) To create, implement, and supervise the Agriculture Cost Share Program for Nonpoint Source Pollution Control pursuant to G.S. 143-215.74.
- (10) To review and approve or disapprove the application of a district supervisor for a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control as provided by G.S. 139-8(13).

(e) A member of the Commission may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control if:

- (1) The member does not vote on the application or attempt to influence the outcome of any action on the application; and
- (2) The application is approved by the Secretary of Environment, Health, and Natural Resources."

**Sec. 2.** G.S. 139-8 is amended by designating the existing language as subsection (a) and by adding a new subdivision to subsection (a) to read:

- "(13) To assist the Commission in the implementation and supervision of the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to G.S. 143-215.74 and to assist in the implementation and supervision of any other program intended to protect water quality administered by the Department of Environment, Health, and Natural Resources by providing technical assistance, allocating available grant monies, and providing any other assistance that may be required or authorized by any provision of federal or State law."

**Sec. 3.** G.S. 139-8 is amended by adding a new subsection to read:

"(b) A district supervisor may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control if:

1. The district supervisor does not vote on the application or attempt to influence the outcome of any action on the application; and
2. The application is approved by the Commission."

**Sec. 4.** G.S. 14-234 is amended by adding a new subsection to read:

"(d3) Subsection (a) of this section does not apply to an application for or the receipt of a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to G.S. 143-215.74 by a member of the Soil and Water Conservation Commission if the requirements of G.S. 139-4(e) are met, and does not apply to a district supervisor of a soil and water conservation district if the requirements of G.S. 139-8(b) are met."

**Sec. 5.** G.S. 139-3(4) reads as rewritten:

"(4) 'Commission' or 'Soil and Water Conservation Commission' means the ~~agency created in G.S. 139-4~~, Soil and Water Conservation Commission created by G.S. 143B-294."

**Sec. 6.** Of the funds appropriated in House Bill 230 of the 1995 General Assembly, if enacted by the General Assembly, to the Department of Environment, Health, and Natural Resources, Division of Soil and Water Conservation, for the 1995-96 fiscal year for the Agriculture Cost Share Program for Nonpoint Source Pollution Control, the sum of five hundred thousand dollars (\$500,000) shall be used for the 1995-96 fiscal year for capital expenses associated with developing agriculture waste management measures that reduce agricultural nonpoint source discharges, consistent with G.S. 143-214.5(a). These funds shall be used in accordance with the match and program requirements set forth in G.S. 143-215.74(b). Any funds remaining at the end of the 1995-96 fiscal year shall not revert, but shall remain available for the use authorized by this subsection.

**Sec. 7.** Section 6 of this act becomes effective 1 July 1995. All other provisions of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 559

## CHAPTER 520

AN ACT TO PROVIDE THAT ACCEPTANCE OF RENT BY A HOUSING AUTHORITY IS NOT A WAIVER OF DEFAULT AND TO AUTHORIZE HOUSING AUTHORITIES TO GOVERN ENTRY UPON HOUSING AUTHORITY PROPERTY BY GUESTS AND VISITORS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 157-29 is amended by adding a new subsection to read:

"(d) The receipt or acceptance of rent by an authority, with or without knowledge of a prior default or failure by the tenant under a rental agreement, shall not constitute a waiver of that default or failure unless (i) the authority expressly agrees to such waiver in writing, or (ii) within 120 days after obtaining knowledge of the default or failure, the authority fails either to notify the tenant that a violation of the rental agreement has occurred or to exercise one of the authority's remedies for such violation."

**Sec. 2.** G.S. 157-9 reads as rewritten:

*"§ 157-9. Powers of authority.*

(a) An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or insanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe or insanitary dwelling or housing

conditions exist, and the providing of dwelling accommodations for persons of low income, and to cooperate with any city municipal or regional planning agency; to prepare, carry out and operate housing projects; to approve, assist, and cooperate with, as its instrumentality, a nonprofit corporation in providing financing by the issuance by such nonprofit corporation's obligations (which obligations shall not be or be deemed to be indebtedness of a housing authority) for one or more housing projects, pursuant to the United States Housing Act of 1937, as amended, and applicable regulations thereunder, specifically including, but not limited to, programs to make construction and other loans to developers or owners of residential housing, and to acquire, operate or manage such a housing project, and to administer federal housing assistance subsidy payments for such projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government, or by any city or municipality located in whole or in part within its boundaries; to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by such city; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities or for the acquisition by such city, municipality, or government of property, options or property rights or for the furnishing of property or services in connection with a project; to arrange with the State, its subdivisions and agencies, and any county, city or municipality of the State, to the extent that it is within the scope of each of their respective functions, (i) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (ii) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (iii) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government; to acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property; to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts

thereof secured by mortgages made or held by the authority on any property included in any housing project; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this Article; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this Article, to carry into effect the powers and purposes of the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare. Any of the investigations or examinations provided for in this Article may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions. An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this State, and for such purposes an authority may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation or corporations. Any corporate agent, (i) all of the stock of which shall be owned by the authority or its nominee or nominees or (ii) the board of directors of which shall be elected or appointed by the authority or is composed of the commissioners of the authority or (iii) which is otherwise subject to the control of the authority or the governmental entity which created the authority, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary



and convenient to carry out the powers expressly given in this Article. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

(b) Notwithstanding anything to the contrary contained in this Article or in any other provision of law an authority may include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

(c) To the extent not inconsistent with the Constitution or statutes of this State or the United States, an authority may adopt and enforce rules governing the lawful entry of guests and visitors to its properties, including the visitors and guests of its tenants. Prior to adopting such rules, an authority shall make reasonable efforts to consult with or obtain comments from its tenants or their representatives. Persons who enter or remain on the property of an authority in violation of such rules shall be subject to prosecution as applicable under G.S. 14-159.12 or G.S. 14-159.13."

**Sec. 3.** Section 1 of this act becomes effective August 1, 1995, and applies to rent received or accepted on or after that date. However, Section 1 of this act shall not be construed to imply that the acceptance of rent prior to August 1, 1995, constituted a waiver of default or failure. The remainder of this act becomes effective August 1, 1995.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 649

## CHAPTER 521

### AN ACT CONCERNING SWEET POTATOES.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 106-550 reads as rewritten:

"§ 106-550. *Policy as to promotion of use of, and markets for, farm products.*

It is declared to be in the interest of the public welfare that the North Carolina farmers who are producers of livestock, poultry, field crops and other agricultural products, including cattle, sheep, broilers, turkeys, commercial eggs, peanuts, cotton, potatoes, sweet potatoes, peaches, apples, berries, vegetables and other fruits of all kinds, as well as bulbs and flowers and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in cooperation with growers, handlers, dealers and processors of such products in promoting and stimulating, by advertising and other methods, the increased production, use and sale, domestic and foreign, of any and all of such agricultural commodities. The provisions of this Article, however, shall not include the agricultural products of tobacco, strawberries, strawberry plants, or porcine animals, with respect to which separate provisions have been made."

**Sec. 2.** Article 50 of Chapter 106 of the General Statutes is amended by adding a new section to read:



"§ 106-564.4. Alternative method for collection of assessments relating to sweet potatoes.

(a) In the event the producers of sweet potatoes approve an assessment pursuant to G.S. 106-564, which assessment shall be paid by the producer based on the number of acres produced, the producer shall report the number of acres planted and shall remit the assessment due to the Commissioner of Agriculture. Sweet potato producers shall report acreage planted at a time and place determined by the duly certified agency representing the producers of sweet potatoes.

(b) Assessments shall be due on September 1 of each year. Any producer who fails to pay assessments by September 30 of each year shall also pay a penalty of ten percent (10%) of the unpaid assessment, plus a penalty of one percent (1%) of the unpaid assessment for each month the assessment remains unpaid. The Commissioner of Agriculture shall remit all assessments received to the duly certified agency representing the producers of sweet potatoes. The duly certified agency representing the producers of sweet potatoes may conduct inspections and audits of sweet potato producers in order to verify the number of acres of sweet potatoes planted and may bring an action to recover unpaid assessments and penalties and the reasonable costs of such action, including attorneys' fees.

(c) There shall be no refund of assessments collected pursuant to this section.

(d) For the purposes of this section, 'producer' shall be defined as a grower of one acre or more of sweet potatoes."

Sec. 3. Chapter 145 of the General Statutes is amended by adding the following section to read:

"§ 145-17. State vegetable.

The sweet potato is adopted as the official vegetable of the State of North Carolina."

Sec. 4. This act is effective upon ratification. Sections 1 and 2 apply to sweet potatoes harvested on or after January 1, 1995.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

H.B. 637

CHAPTER 522

AN ACT TO AMEND THE LAW REGARDING PRODUCTS LIABILITY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 99B of the General Statutes reads as rewritten:

"Chapter 99B.

"Products Liability.

"§ 99B-1. Definitions.

When used in this Chapter, unless the context otherwise requires:

- (1) 'Claimant' means a person or other entity asserting a claim and, if said claim is asserted on behalf of an estate, an incompetent or a minor, 'claimant' includes plaintiff's decedent, guardian guardian, or guardian ad litem.

- (2) 'Manufacturer' means a person or entity who designs, assembles, fabricates, produces, constructs or otherwise prepares a product or component part of a product prior to its sale to a user or consumer, including a seller owned in whole or significant part by the manufacturer or a seller owning the manufacturer in whole or significant part.
- (3) 'Product liability action' includes any action brought for or on account of personal injury, death or property damage caused by or resulting from the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instructing, marketing, selling, advertising, ~~packaging~~ packaging, or labeling of any product.
- (4) 'Seller' includes a retailer, wholesaler, or distributor, and means any individual or entity engaged in the business of selling a product, whether such sale is for resale or for use or consumption. 'Seller' also includes a lessor or bailor engaged in the business of leasing or bailment of a product.

"§ 99B-1.1. Strict liability.

There shall be no strict liability in tort in product liability actions.

"§ 99B-1.2. Breach of warranty.

Nothing in this act shall preclude a product liability action that otherwise exists against a manufacturer or seller for breach of warranty. The defenses provided for in this Chapter shall apply to claims for breach of warranty unless expressly excluded under this Chapter.

"§ 99B-2. Liability of seller and manufacturer. Seller's opportunity to inspect; privity requirements for warranty claims.

(a) No product liability action, except an action for breach of express warranty, shall be commenced or maintained against any seller when the product was acquired and sold by the seller in a sealed container or when the product was acquired and sold by the seller under circumstances in which the seller was afforded no reasonable opportunity to inspect the product in such a manner that would have or should have, in the exercise of reasonable care, revealed the existence of the condition complained of, unless the seller damaged or mishandled the product while in his possession; provided, that the provisions of this section shall not apply if the manufacturer of the product is not subject to the jurisdiction of the courts of this State or if such manufacturer has been judicially declared insolvent.

(b) A claimant who is a buyer, as defined in the Uniform Commercial Code, of the product involved, or who is a member or a guest of a member of the family of the buyer, a guest of the buyer, or an employee of the buyer may bring a product liability action directly against the manufacturer of the product involved for breach of implied warranty; and the lack of privity of contract shall not be grounds for the dismissal of such action.

"§ 99B-3. Alteration or modification of product.

(a) No manufacturer or seller of a product shall be held liable in any product liability action where a proximate cause of the personal injury, death death, or damage to property was either an alteration or modification of the product by a party other than the manufacturer or seller, which alteration

or modification occurred after the product left the control of such manufacturer or such seller unless:

- (1) The alteration or modification was in accordance with the instructions or specifications of such manufacturer or such seller; or
- (2) The alteration or modification was made with the express consent of such manufacturer or such seller.

(b) For the purposes of this section, alteration or modification includes changes in the design, formula, function, or use of the product from that originally designed, tested, or intended by the manufacturer. It includes failure to observe routine care and maintenance, but does not include ordinary wear and tear.

*"§ 99B-4. ~~Injured parties' knowledge~~ Knowledge or reasonable care.*

No manufacturer or seller shall be held liable in any product liability action if:

- (1) The use of the product giving rise to the product liability action was contrary to any express and adequate instructions or warnings delivered with, appearing on, or attached to the product or on its original container or wrapping, if the user knew or with the exercise of reasonable and diligent care should have known of such instructions or warnings; ~~provided, that in the case of prescription drugs or devices the adequacy of the warning by the manufacturer shall be determined by the prescribing information made available by the manufacturer to the health care practitioner;~~ or
- (2) The user knew of or discovered a defect or ~~unreasonably dangerous condition of the product and was aware of the danger,~~ that was inconsistent with the safe use of the product, and then unreasonably and voluntarily exposed himself or herself to the danger, and nevertheless proceeded unreasonably to make use of the product and was injured by or caused injury with that product; or
- (3) The claimant failed to exercise reasonable care under the circumstances in ~~his~~ the use of the product, and such failure was a proximate cause of the occurrence that caused the injury or damage to the claimant, complained of.

*"§ 99B-5. Claims based on inadequate warning or instruction.*

(a) No manufacturer or seller of a product shall be held liable in any product liability action for a claim based upon inadequate warning or instruction unless the claimant proves that the manufacturer or seller acted unreasonably in failing to provide such warning or instruction, that the failure to provide adequate warning or instruction was a proximate cause of the harm for which damages are sought, and also proves one of the following:

- (1) At the time the product left the control of the manufacturer or seller, the product, without an adequate warning or instruction, created an unreasonably dangerous condition that the manufacturer or seller knew, or in the exercise of ordinary care should have

known, posed a substantial risk of harm to a reasonably foreseeable claimant.

- (2) After the product left the control of the manufacturer or seller, the manufacturer or seller became aware of or in the exercise of ordinary care should have known that the product posed a substantial risk of harm to a reasonably foreseeable user or consumer and failed to take reasonable steps to give adequate warning or instruction or to take other reasonable action under the circumstances.

(b) Notwithstanding subsection (a) of this section, no manufacturer or seller of a product shall be held liable in any product liability action for failing to warn about an open and obvious risk or a risk that is a matter of common knowledge.

(c) Notwithstanding subsection (a) of this section, no manufacturer or seller of a prescription drug shall be liable in a products liability action for failing to provide a warning or instruction directly to a consumer if an adequate warning or instruction has been provided to the physician or other legally authorized person who prescribes or dispenses that prescription drug for the claimant unless the United States Food and Drug Administration requires such direct consumer warning or instruction to accompany the product.

"§ 99B-6. Claims based on inadequate design or formulation.

(a) No manufacturer of a product shall be held liable in any product liability action for the inadequate design or formulation of the product unless the claimant proves that at the time of its manufacture the manufacturer acted unreasonably in designing or formulating the product, that this conduct was a proximate cause of the harm for which damages are sought, and also proves one of the following:

- (1) At the time the product left the control of the manufacturer, the manufacturer unreasonably failed to adopt a safer, practical, feasible, and otherwise reasonable alternative design or formulation that could then have been reasonably adopted and that would have prevented or substantially reduced the risk of harm without substantially impairing the usefulness, practicality, or desirability of the product.

- (2) At the time the product left the control of the manufacturer, the design or formulation of the product was so unreasonable that a reasonable person, aware of the relevant facts, would not use or consume a product of this design.

(b) In determining whether the manufacturer acted unreasonably under subsection (a) of this section, the factors to be considered shall include, but are not limited to, the following:

- (1) The nature and magnitude of the risks of harm associated with the design or formulation in light of the intended and reasonably foreseeable uses, modifications, or alterations of the product.
- (2) The likely awareness of product users, whether based on warnings, general knowledge, or otherwise, of those risks of harm.



- (3) The extent to which the design or formulation conformed to any applicable government standard that was in effect when the product left the control of its manufacturer.
- (4) The extent to which the labeling for a prescription or nonprescription drug approved by the United States Food and Drug Administration conformed to any applicable government or private standard that was in effect when the product left the control of its manufacturer.
- (5) The utility of the product, including the performance, safety, and other advantages associated with that design or formulation.
- (6) The technical, economic, and practical feasibility of using an alternative design or formulation at the time of manufacture.
- (7) The nature and magnitude of any foreseeable risks associated with the alternative design or formulation.

(c) No manufacturer of a product shall be held liable in any product liability action for a claim under this section to the extent that it is based upon an inherent characteristic of the product that cannot be eliminated without substantially compromising the product's usefulness or desirability and that is recognized by the ordinary person with the ordinary knowledge common to the community.

(d) No manufacturer of a prescription drug shall be liable in a product liability action on account of some aspect of the prescription drug that is unavoidably unsafe, if an adequate warning and instruction has been provided pursuant to G.S. 99B-5(c). As used in this subsection, 'unavoidably unsafe' means that, in the state of technical, scientific, and medical knowledge generally prevailing at the time the product left the control of its manufacturer, an aspect of that product that caused the claimant's harm was not reasonably capable of being made safe.

(e) Nothing in this section precludes an action against a manufacturer in accordance with the provisions of G.S. 99B-5.

"§ 99B-10. Immunity for donated food.

(a) Notwithstanding the provisions of Article 12 of Chapter 106 of the General Statutes, or any other provision of law, any person, including but not limited to a seller, farmer, processor, distributor, ~~wholesaler~~ wholesaler, or retailer of food, who donates an item of food for use or distribution by a nonprofit organization or nonprofit corporation shall not be liable for civil damages or criminal penalties resulting from the nature, age, condition, or packaging of the donated food, unless an injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor.

(b) Notwithstanding any other provision of law, any nonprofit organization or nonprofit corporation that uses or distributes food that has been donated to it for such use or distribution shall not be liable for civil damages or criminal penalties resulting from the nature, age, condition, or packaging of the donated food, unless an injury is caused by the gross negligence, recklessness, or intentional misconduct of the organization or corporation.

"§ 99B-11. ~~Products liability lawsuits involving~~ Claims based on defective design of firearms.



(a) In a products liability action involving firearms or ammunition, whether a firearm or ammunition shell is defective in design shall not be based on a comparison or weighing of the benefits of the product against the risk of injury, damage, or death posed by its potential to cause that injury, damage, or death when discharged.

(b) In a products liability action brought against a firearm or ammunition manufacturer, importer, distributor, or retailer that alleges a design defect, the burden is on the plaintiff to prove, in addition to any other elements required to be proved:

- (1) That the actual design of the firearm or ammunition was defective, causing it not to function in a manner reasonably expected by an ordinary consumer of firearms or ammunition; and
- (2) That any defective design was the proximate cause of the injury, damage, or death."

**Sec. 2.** The provisions of this act are severable. If any portion of this act is declared unconstitutional or the application of this act to any person or circumstances is held invalid, the remaining portions and their applicability to any person or circumstances are valid.

**Sec. 3.** This act shall not apply to product liability actions for injury to or the death of a person resulting from any silicone gel breast implant implanted prior to January 1, 1996.

**Sec. 4.** This act becomes effective January 1, 1996, and applies to causes of action arising on or after that date.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

H.B. 941

## CHAPTER 523

AN ACT TO CONFORM THE PROVISIONS OF THE PUBLIC UTILITIES CHAPTER OF THE GENERAL STATUTES TO THE FEDERAL PREEMPTION OF STATE REGULATION OF INTRASTATE TRANSPORTATION OF PROPERTY EXCEPT HOUSEHOLD GOODS AND TO THE FEDERAL PREEMPTION OF STATE REGULATION OF WIRELESS TELECOMMUNICATIONS CARRIERS, TO INCREASE THE APPLICATION FEE AND TO MODIFY THE MOTOR FUEL TAX REFUND PROCEDURES FOR UNDYED DIESEL FUEL USED IN BOATS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 62-3 reads as rewritten:

"§ 62-3. *Definitions.*

As used in this Chapter, unless the context otherwise requires, the term:

- (1) 'Broker,' with regard to motor carriers of passengers, means any person not included in the term 'motor carrier' and not a bona fide employee or agent of any such carrier, who or which as principal or agent engages in the business of selling or offering for sale any transportation of passengers by motor carrier, or negotiates for or holds himself, or itself, out by solicitation, advertisements, or otherwise, as one who sells,

- provides, furnishes, contracts, or arranges for such transportation for compensation, either directly or indirectly.
- (1a) 'Bus company' means any common carrier by motor vehicle which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of passengers over fixed routes or in charter operations, or both, except as exempted in G.S. 62-260.
- (2) 'Certificate' means a certificate of public convenience and necessity issued by the Commission to a public utility or a certificate of authority issued by the Commission to a bus company.
- (3) 'Certified mail' means such mail only when a return receipt is requested.
- (4) 'Charter operations' with regard to bus companies means the transportation of a group of persons for sightseeing purposes, pleasure tours, and other types of special operations, or the transportation of a group of persons who, pursuant to a common purpose and under a single contract, and for a fixed charge for the vehicle, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after having left the place of origin.
- (5) 'Commission' means the North Carolina Utilities Commission.
- (6) 'Common carrier' means any person which holds itself out to the general public to engage in transportation of persons or property household goods for compensation, including transportation by train, bus, truck, boat or other conveyance, except as exempted in G.S. 62-260.
- (7) 'Common carrier by motor vehicle' means any person which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property household goods or any class or classes thereof for compensation, whether over regular or irregular routes, or in charter operations, except as exempted in G.S. 62-260.
- (8) ~~'Contract carrier by motor vehicle' means any person which, under an individual contract or agreement with another person and with such additional persons as may be approved by the Utilities Commission, engages in the transportation other than the transportation referred to in subdivision (7) of this section, by motor vehicle of persons or property in intrastate commerce for compensation, except as exempted in G.S. 62-260.~~
- (9) ~~'Contract carrier' means any person which under an individual contract or agreement with another person and with such additional persons as may be approved by the Utilities Commission, engages in the transportation of persons or property for compensation, except as exempted in G.S. 62-260.~~

- (9a) 'Fixed route' means the specific highway or highways over which a bus company is authorized to operate between fixed termini.
- (10) 'Foreign commerce' means commerce between any place in the United States and any place in a foreign country, or between places in the United States through any foreign country.
- (11) 'Franchise' means the grant of authority by the Commission to any person to engage in business as a public ~~utility or contract carrier~~, utility, whether or not exclusive or shared with others or restricted as to terms and conditions and whether described by area or territory or not, and includes ~~certificates and permits~~, certificates, and all other forms of licenses or orders and decisions granting such authority.
- (12) 'Highway' means any road or street in this State used by the public or dedicated or appropriated to public use.
- (13) 'Industrial plant' means any plant, mill, or factory engaged in the business of manufacturing.
- (14) 'Interstate commerce' means commerce between any place in a state and any place in another state or between places in the same state through another state.
- (15) 'Intrastate commerce' means commerce between points and over a route or within a territory wholly within this State, which commerce is not a part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce, and includes all transportation within this State for compensation in interstate or foreign commerce which has been exempted by Congress from federal regulation.
- (16) 'Intrastate operations' means the transportation of persons or ~~property~~ household goods for compensation in intrastate commerce.
- (17) 'Motor carrier' means ~~both a common carrier by motor vehicle and a contract carrier by motor vehicle~~.
- (18) 'Motor vehicle' means any vehicle, machine, tractor, semi-trailer, or any combination thereof, which is propelled or drawn by mechanical power and used upon the highways within the State.
- (19) 'Municipality' means any incorporated community, whether designated in its charter as a city, town, or village.
- (20) ~~'Permit' means a permit issued by the Commission pursuant to the provisions of this Chapter to a contract carrier by motor vehicle.~~
- (21) 'Person' means a corporation, individual, copartnership, company, association, or any combination of individuals or organizations doing business as a unit, and includes any trustee, receiver, assignee, lessee, or personal representative thereof.
- (22) 'Private carrier' means any person not included in the definitions of common ~~carrier or contract~~ carrier, which transports in intrastate commerce in its own vehicle or vehicles property of which such person is the owner, lessee, or bailee.

when such transportation is for the purpose of sale, lease, rent, or bailment, or when such transportation is purely an incidental adjunct to some other established private business owned and operated by such person other than the transportation of property household goods for compensation.

- (23) a. 'Public utility' means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:
1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term 'public utility' shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation.
  2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term 'public utility' shall not include any person or company whose sole operation consists of selling water to less than 10 residential customers, except that any person or company which constructs a water system in a subdivision with plans for 10 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than 10 residential building lots shall be a public utility at the time of such planning or holding out to serve such 10 or more building lots, without regard to the number of actual customers connected;
  3. Transporting persons or property household goods by street, suburban or interurban bus or railways for the public for compensation;
  4. Transporting persons or property household goods by railways or motor vehicles, or any other form of transportation ~~or express service~~ for the public for compensation, except motor carriers exempted in G.S. 62-260, and except carriers by air;
  5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
  6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.



- b. The term 'public utility' shall for rate-making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.
- c. The term 'public utility' shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.
- d. The term 'public utility,' except as otherwise expressly provided in this Chapter, shall not include a municipality, an authority organized under the North Carolina Water and Sewer Authorities Act, electric or telephone membership corporation or nonprofit water membership or consumer-owned corporations financed by the Farmers Home Administration, the United States Department of Housing and Urban Development, or any similar or successor federal financing agency, provided, that (i) any such financing administration, department or agency exercise substantial control over and regulation of any such corporation's rates and terms and conditions of service, and (ii) the members or consumer-owners of any such corporation, pursuant to the corporation's articles of incorporation and bylaws, shall elect the governing board of the corporation; or any person not otherwise a public utility who furnishes such service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others; provided, however, that any person other than a nonprofit organization serving only its members, who distributes or provides utility service to his employees or tenants by individual meters or by other coin-operated devices with a charge for metered or coin-operated utility service shall be a public utility within the definition and meaning of this Chapter with respect to the regulation of rates and provisions of service rendered through such meter or coin-operated device imposing such separate metered utility charge. If any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this Chapter. A water or sewer system owned by a homeowners' association that provides water or sewer service only to members or leaseholds of members is not subject to the provisions of this Chapter.
- e. The term 'public utility' shall include the University of North Carolina insofar as said University supplies telephone service, electricity or water to the public for compensation from the University Enterprises defined in G.S. 116-41.1(9).



- f. The term 'public utility' shall include the Town of Pineville insofar as said town supplies telephone services to the public for compensation. The territory to be served by the Town of Pineville in furnishing telephone services, subject to the Public Utilities Act, shall include the town limits as they exist on May 8, 1973, and shall also include the area proposed to be annexed under the town's ordinance adopted May 3, 1971, until January 1, 1975.
  - g. The term 'public utility' shall not include a hotel, motel, time share or condominium complex operated primarily to serve transient occupants, which imposes charges to occupants for local, long-distance, or wide area telecommunication services when such calls are completed through the use of facilities provided by a public utility, and provided further that the local services received are rated in accordance with the provisions of G.S. 62-110(d) and the applicable charges for telephone calls are prominently displayed in each area where occupant rooms are located.
  - h. The term 'public utility' shall not include the resale of electricity by (i) a campground operated primarily to serve transient occupants, or (ii) a marina; provided that (i) the campground or marina charges no more than the actual cost of the electricity supplied to it, (ii) the amount of electricity used by each campsite or marina slip occupant is measured by an individual metering device, (iii) the applicable rates are prominently displayed at or near each campsite or marina slip, and (iv) the campground or marina only resells electricity to campsite or marina slip occupants.
  - i. The term 'public utility' shall not include the State, the Office of the State Controller, or the Microelectronics Center of North Carolina in the provision or sharing of switched broadband telecommunications services with non-State entities or organizations of the kind or type set forth in G.S. 143B-426.39.
  - j. The term 'public utility' shall not include any person, not otherwise a public utility, conveying or transmitting messages or communications by mobile radio communications service. Mobile radio communications service includes one-way or two-way radio service provided to mobile or fixed stations or receivers using mobile radio service frequencies.
- (24) 'Rate' means every compensation, charge, fare, tariff, schedule, toll, rental and classification, or any of them, demanded, observed, charged or collected by any public utility, for any service product or commodity offered by it to the public, and any rules, regulations, practices or contracts affecting any such compensation, charge, fare, tariff, schedule, toll, rental or classification.

- (25) 'Route' means the course or way which is traveled; the road or highway over which motor vehicles operate.
- (26) 'Securities' means stock, stock certificates, bonds, notes, debentures, or other evidences of ownership or of indebtedness, and any assumption or guaranty thereof.
- (27) 'Service' means any service furnished by a public utility, including any commodity furnished as a part of such service and any ancillary service or facility used in connection with such service.
- (27a) 'Small power producer' means a person or corporation owning or operating an electrical power production facility with a power production capacity which, together with any other facilities located at the same site, does not exceed 80 megawatts of electricity and which depends upon renewable resources for its primary source of energy. For the purposes of this section, renewable resources shall mean: hydroelectric power. A small power producer shall not include persons primarily engaged in the generation or sale of electricity from other than small power production facilities.
- (28) The word 'State' means the State of North Carolina; 'state' means any state.
- (29) 'Town' means any unincorporated community or collection of people having a geographical name by which it may be generally known and is so generally designated.
- (30) 'Panel' means a panel of three commissioners, a division of the Utilities Commission authorized for the purpose of carrying out certain functions of the Commission."

**Sec. 2.** G.S. 62-111 reads as rewritten:

*"§ 62-111. Transfers of franchises; mergers, consolidations and combinations of public utilities.*

(a) No franchise now existing or hereafter issued under the provisions of this Chapter other than a franchise for motor carriers of passengers shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity. Provided, that the above provisions shall not apply to regular trading in listed securities on recognized markets.

(b) No certificates ~~or permits~~ issued under the provisions of this Chapter for motor carriers of passengers shall be sold, assigned, pledged, transferred, or control changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any motor carrier of passengers be made through acquisition of control by stock purchases or otherwise, except after application to and written approval by the Commission as in this section provided, provided that the above provisions shall not apply to regular trading in listing securities on recognized markets. The applicant shall give not less than 10 days' written

notice of such application by registered mail or by certified mail to all connecting and competing carriers. When the Commission is of the opinion that the transaction is consistent with the purposes of this Chapter the Commission may, in the exercise of its discretion, grant its approval, provided, however, that when such transaction will result in a substantial change in the service and operations of any motor carrier of passengers party to the transaction, or will substantially affect the operations and services of any other motor carrier, the Commission shall not grant its approval except upon notice and hearing as required in ~~G.S. 62-262 for contract carriers of passengers and~~ G.S. 62-262.1 for bus companies upon an application for an original ~~certificate or permit~~, certificate. In all cases arising under the subsection it shall be the duty of the Commission to require the successor carrier to satisfy the Commission that the operating debts and obligations of the seller, assignor, pledgor, lessor or transferor, including taxes due the State of North Carolina or any political subdivision thereof are paid or the payment thereof is adequately secured. The Commission may attach to its approval of any transaction arising under the section such other conditions as the Commission may determine are necessary to effectuate the purposes of this Article.

(c) No sale of a franchise for a motor carrier of ~~property~~ household goods shall be approved by the Commission until the seller shall have filed with the Commission a statement under oath of all debts and claims against the seller, of which such seller has any knowledge or notice, (i) for gross receipts, use or privilege taxes due or to become due the State, as provided in the Revenue Act, (ii) for wages due employees of the seller, other than salaries of officers and in the case of motor carriers, (iii) for unremitted C.O.D. collections due shippers, (iv) for loss of or damage to goods transported, or received for transportation, (v) for overcharges on property transported, and, (vi) for interline accounts due other carriers, together with a bond, if required by the Commission, payable to the State, executed by a surety company authorized to do business in the State, in an amount double the aggregate of all such debts and claims conditioned upon the payment of the same within the amount of such bond as the amounts and validity of such debts and claims are established by agreement of the parties, or by judgment. This subsection shall not be applicable to sales by personal representatives of deceased or incompetent persons, receivers or trustees in bankruptcy under court order.

(d) No person shall obtain a franchise for the purpose of transferring the same to another, and an offer of such transfer within one year after the same was obtained shall be prima facie evidence that such certificate or permit was obtained for the purpose of sale.

(e) The Commission shall approve applications for transfer of motor carrier franchises made under this section upon finding that said sale, assignment, pledge, transfer, change of control, lease, merger, or combination is in the public interest, will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to the public by other public utilities, that the person acquiring said franchise or control thereof is fit, willing and able to perform such service to the public under said franchise, and that service under said franchise has been

continuously offered to the public up to the time of filing said application or in lieu thereof that any suspension of service exceeding 30 days has been approved by the Commission as provided in G.S. 62-112(b)(5). Provided, however, the Commission shall approve, without imposing conditions or limitations, applications for the transfer of a bus company franchise made under this section upon finding that the person acquiring the franchise or control of the franchise is fit, willing and able to perform services to the public under that franchise."

**Sec. 3.** G.S. 62-112(c) reads as rewritten:

"(c) The failure of a common carrier ~~or contract carrier~~ of passengers or ~~property~~ household goods by motor vehicles to perform any transportation for compensation under the authority of its certificate ~~or permit~~ for a period of 30 consecutive days shall be prima facie evidence that said franchise is dormant and the public convenience and necessity is no longer served by such common carrier ~~certificate or that the needs of a contract shipper are no longer served by such a contract carrier,~~ certificate. Upon finding after notice and hearing that no such service has been performed for a period of 30 days the Commission is authorized to find that the franchise is dormant and to cancel the certificate ~~or permit~~ of such common ~~or contract~~ carrier. The Commission in its discretion may give consideration in such finding to other factors affecting the performance of such service, including seasonal requirements of the passengers or commodities authorized to be transported, the efforts of the carrier to make its services known to the ~~public or to its contract shipper,~~ public, the equipment and other facilities maintained by the carrier for performance of such service, and the means by which such carrier holds itself out to perform such service. A proceeding may be brought under this section by the Commission on its own motion or upon the complaint of any shipper or any other carrier. The franchise of a motor carrier may be canceled under the provisions of this section in any proceeding to sell or transfer or otherwise change control of said franchise brought under the provisions of G.S. 62-111, upon finding of dormancy as provided in this section. Any motor carrier who has obtained authority to suspend operations under the provisions of G.S. 62-112(b)(5) and the rules of the Utilities Commission issued thereunder shall not be subject to cancellation of its franchise under this section during the time such suspension of operations is authorized. In determining whether such carrier has made reasonable efforts to perform service under said franchise the Commission may in its discretion give consideration to disabilities of the carrier including death of the owner and physical disabilities."

**Sec. 4.** G.S. 62-113(a) reads as rewritten:

"(a) Each franchise shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, a motor carrier or other public utility is authorized to operate: and there shall, at the time of issuance and from time to time thereafter, be attached to the privileges granted by the franchise such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of



the route or routes of a carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of a carrier or other public utility, the requirements established by the Commission under this Chapter; provided, however, that no terms, conditions, or limitations shall restrict the right of a motor carrier of ~~property~~ household goods only to add to its equipment and facilities over the routes, between the termini, or within the territory specified in the franchises, as the development of the business and the demands of the public shall require. This subsection shall not be applicable to bus companies or their franchisees."

Sec. 5. G.S. 62-114 is repealed.

Sec. 6. G.S. 62-138 reads as rewritten:

"§ 62-138. *Utilities to file rates, service regulations and service contracts with Commission; publication; certain telephone service prohibited.*

(a) Under such rules as the Commission may prescribe, every public utility, except as permitted under G.S. 62-134(h) and (j):

- (1) Shall file with the Commission all schedules of rates, service regulations and forms of service contracts, used or to be used within the jurisdiction of the Commission; and
- (2) Shall keep copies of such schedules, service regulations and contracts open to public inspection. Except, if there is a sufficient likelihood that a public utility defined in G.S. 62-3(23)a.6. may suffer a competitive disadvantage if the rates for a specific competitive service are disclosed, the Commission may waive the public disclosure of the rates. The Commission may revoke the disclosure waiver upon a showing that the competitive disadvantage no longer exists.

(b) Every ~~regular route common carrier of general commodities and every~~ common carrier of passengers shall file with the Commission, print, and keep open for public inspection schedules showing all rates for the transportation of ~~property~~ or passengers in intrastate commerce and all services in connection therewith between points on its own routes and between points on its own routes and points on the routes of other such common carriers, and if it establishes joint rates with other common carriers, it shall include in its schedules so filed such joint rates.

(c) Every irregular route common carrier of household goods shall file with the Commission, print, and keep open for public inspection schedules showing all rates for the transportation of ~~property~~ household goods in intrastate commerce between points within the area of its authorized operation, and if it establishes joint rates with other common carriers, it shall include in its schedules so filed such joint rates between points within the area of its own authorized operation and points on the line or route of such other common carriers.

(c1) Any person who, though exempt from Commission regulation under Public Law 103-305, agrees to joint line rates or routes as authorized by Public Law 103-305 may file with the Commission, print, and keep open for public inspection schedules showing all such joint rates for the transportation of property in intrastate commerce, and all connected services, between all points the person serves.



(d) The schedules required by this section shall be published, filed, and posted in such form and manner and shall contain such information as the Commission may prescribe; and the Commission is authorized to reject any schedule filed with it which is not in compliance with this section. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(e) No public utility, unless otherwise provided by this Chapter, shall engage in service to the public unless its rates for such service have been filed and published in accordance with the provisions of this section.

(f) Under such rules as the Commission may prescribe, every electric membership corporation operating within this State shall file with the Commission, for information purposes, all rates, schedules of rates, charges, service regulations, and forms of service contracts, used or to be used within the State, and shall keep copies of such schedules, rates, charges, service regulations, and contracts open to public inspection.

(g) No public utility may offer or maintain telephone service to any subscriber to such service who has in use or proposes to place in use equipment which will enable said subscriber to observe or monitor telephone calls directed to or placed by said subscriber unless said subscriber shall agree that such equipment shall be used in conformity with the standards for the use of such equipment adopted by the Commission."

**Sec. 7.** G.S. 62-141 reads as rewritten:

"§ 62-141. *Long and short hauls.*

(a) Except when expressly permitted by the Commission, it shall be unlawful for any common carrier to charge or receive any greater compensation in the aggregate for the transportation of like kind of property household goods under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Chapter to charge and receive as great compensation for a shorter as for a longer distance.

(b) Upon application to the Commission, common carriers may in special cases be authorized to charge less for longer than for shorter distances for the transportation property; of household goods; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section.

(c) The provisions of this section shall not be applicable to bus companies or to their rates, charges or tariffs."

**Sec. 8.** G.S. 62-144(d) reads as rewritten:

"(d) Nothing in this section shall prohibit the carriage, storage or handling of property household goods free or at reduced rates for the United States, State or municipal governments, or for charitable or educational purposes, or the use of passes for journeys wholly within this State which have been or may be issued for interstate journeys under the authority of the United States Interstate Commerce Commission."

**Sec. 9.** G.S. 62-146 reads as rewritten:

"§ 62-146. *Rates and service of motor common carriers of property.*

(a) It shall be the duty of every common carrier of property household goods by motor vehicle to provide safe and adequate service, equipment, and facilities for transportation in intrastate commerce and to establish, observe and enforce just and reasonable regulations and practices relating thereto, and, in the case of property household goods carriers, relating to the manner and method of presenting, marking, packing and delivering property for transportation in intrastate commerce.

(b) Except under special conditions and for good cause shown, a common carrier by motor vehicle authorized to transport general commodities over regular routes shall establish reasonable through routes and joint rates, charges, and classifications with other such common carriers by motor vehicle; and such common carrier may establish, with the prior approval of the Commission, such routes, joint rates, charges and classifications with any irregular route common carrier by motor vehicle, or any common carrier by rail, express, or water.

(c) Repealed by Session Laws 1985, c. 676, s. 15, effective July 10, 1985.

(d) In case of joint rates between common carriers of property, it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein, which shall not unduly prefer or prejudice any of such participating carriers. Upon investigation and for good cause, the Commission may, in its discretion, prohibit the establishment of joint rates or service.

(e) Any person may make complaint in writing to the Commission that any rate, classification, rule, regulations, or practice in effect or proposed to be put into effect, is or will be in violation of this Article. Whenever, after hearing, upon complaint or in an investigation or its own initiative, the Commission shall be of the opinion that any individual or joint rate demanded, charged, or collected by any common carrier or carriers by motor vehicle, or by any such common carrier or carriers in conjunction with any other common carrier or carriers, for transportation of property household goods in intrastate commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate or the value of the service thereunder, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate or the minimum or maximum, or the minimum and maximum rate thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective.

(f) Whenever, after hearing upon complaint or upon its own initiative, the Commission is of the opinion that the divisions of joint rates applicable to the transportation of property household goods in intrastate commerce between a common carrier by motor vehicle and another carrier are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable division thereof to be received by the several carriers; and in cases where the joint rate or charge was established

pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable or unduly preferential or prejudicial, the Commission may also by order determine what would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers and require adjustment to be made in accordance therewith. The order of the Commission may require the adjustment of divisions between the carriers in accordance with the order from the date of filing the complaint or entry of order of investigation or such other dates subsequent thereto as the Commission finds justified, and in the case of joint rates prescribed by the Commission, the order as to divisions may be made effective as a part of the original order.

(g) In any proceeding to determine the justness or reasonableness of any rate of any common carrier of property household goods by motor vehicle, there shall not be taken into consideration or allowed as evidence any elements of value of the property of such carrier, good will, earning power, or the certificate under which such carrier is operating, and such rates shall be fixed and approved, subject to the provisions of subsection (h) hereof, on the basis of the operating ratios of such carriers, being the ratio of their operating expenses to their operating revenues, at a ratio to be determined by the Commission; and in applying for and receiving a certificate under this Chapter any such carrier shall be deemed to have agreed to the provisions of this paragraph, on its own behalf and on behalf of every transferee of such certificate or of any part thereof.

(h) In the exercise of its power to prescribe just and reasonable rates and charges for the transportation of property household goods in intrastate commerce by common carriers by motor vehicle, and classifications, regulations, and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon movement of traffic by the carrier or carriers for which rates are prescribed; to the need in the public interest of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers under honest, economical, and efficient management to provide such service.

(i) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith. This section shall be in addition to other provisions of this Chapter which relate to public utilities generally, except that in cases of conflict between such other provisions and this section, this section shall prevail for motor carriers."

Sec. 10. G.S. 62-147 is repealed.

Sec. 10.1. Chapter 62 of the General Statutes is amended by adding a new section to read:

"§ 62-152.2. Standard transportation practices.

(a) For the purposes of this section, 'standard transportation practices' means:

(1) Uniform cargo liability rules.

(2) Uniform bills of lading or receipts for property being transported.

(3) Uniform cargo credit rules.

(4) Antitrust immunity for joint line rates or routes, classification, and mileage guides.

(b) A person otherwise exempt from regulation by the Commission under Public Law 103-305 may file an application with the Commission to participate in one or more standard transportation practices under rules set out by the Commission."

Sec. 11. G.S. 62-200 reads as rewritten:

"§ 62-200. Duty to transport ~~freight~~ household goods within a reasonable time.

(a) It shall be unlawful for any common carrier of property household goods doing business in this State to omit or neglect to transport within a reasonable time any goods, merchandise or other articles of value received by it for shipment and billed to or from any place in this State, unless otherwise agreed upon between the carrier and the shipper, or unless the same be burned, stolen or otherwise destroyed, or unless otherwise provided by the Commission.

(b) Any common carrier violating any of the provisions of this section shall forfeit to the party aggrieved the sum of fifteen dollars (\$15.00) for the first day and two dollars (\$2.00) for each succeeding day of such unlawful detention or neglect where such shipment is made in carload lots, and in less quantities there shall be a forfeiture in like manner of ten dollars (\$10.00) for the first day and one dollar (\$1.00) for each succeeding day, but the forfeiture shall not be collected for a period exceeding 30 days.

(c) In reckoning what is a reasonable time for such transportation, it shall be considered that such common carrier has transported freight household goods within a reasonable time if it has done so in the ordinary time required for transporting such articles of freight by similar carriers between the receiving and shipping stations. The Commission is authorized to establish reasonable times for transportation by the various modes of carriage which shall be held to be prima facie reasonable, and a failure to transport within such times shall be held prima facie unreasonable. This section shall be construed to refer not only to delay in starting the freight household goods from the station where it is received, but to require the delivery at its destination within the time specified: Provided, that if such delay shall be due to causes which could not in the exercise of ordinary care have been foreseen or which were unavoidable, then upon the establishment of these facts to the satisfaction of the court trying the cause, the defendant common carrier shall be relieved from any penalty for delay in the transportation of freight, household goods, but it shall not be relieved from the costs of such action. In all actions to recover penalties against a common carrier under this section, the burden of proof shall be upon such carrier to show where the delay, if any, occurred. The penalties provided in this section shall be in addition to the damages recoverable for failure to transport within a reasonable time.

(d) This section shall not apply to motor carriers of passengers."

Sec. 12. G.S. 62-203 reads as rewritten:

"§ 62-203. Claims for loss or damage to goods; filing and adjustment.

(a) Every common carrier receiving property household goods for transportation in intrastate commerce shall issue a bill of lading therefor,



and shall be liable to the lawful holder thereof for any loss, damage, or injury to such ~~property~~ household goods caused by it, or by any carrier participating in the haul when transported on a through bill of lading, and any such carrier delivering said ~~property~~ household goods so received and transported shall be liable to the lawful holder of said bill of lading or to any party entitled to recover thereon for such loss, damage, or injury, notwithstanding any contract or agreement to the contrary; provided, however, the Commission may, by regulation or order, authorize or require any such common carrier to establish and maintain rates related to the value of shipments declared in writing by the shipper, or agreed upon as the release value of such shipments, such declaration or agreement to have no effect other than to limit liability and recovery to an amount not exceeding the value so declared or released, in which case, any tariff filed pursuant to such regulation or order shall specifically refer thereto; provided further, that a rate shall be afforded the shipper covering the full value of the goods shipped; provided further, that nothing in this section shall deprive any lawful holder of such bill of lading of any remedy or right of action which such holder has under existing law; provided further, that the carrier issuing such bill of lading, or delivering such ~~property~~ household goods so received and transported, shall be entitled to recover from the carrier on whose route the loss, damage, or injury shall have been sustained the amount it may be required to pay to the owners of such property.

(b) Every claim for loss of or damage to ~~property~~ household goods while in possession of a common carrier, ~~including every express company or person doing an express business within the State,~~ carrier shall be adjusted and paid within 90 days after the filing of such claim with the agent of such carrier at the point of destination of such shipment, or point of delivery to another common carrier, by the consignee or at the point of origin by the consignor, when it shall appear that the consignee was the owner of the shipment: Provided, that no such claim shall be filed until after the arrival of the shipment, or some part thereof, at the point of destination, or until after the lapse of a reasonable time for the arrival thereof.

(c) In every case such common carrier shall be liable for the amount of such loss or damage, together with interest thereon from the date of the filing of the claim therefor until the payment thereof. Failure to adjust and pay such claim within the periods respectively herein prescribed shall subject each common carrier so failing to a penalty of fifty dollars (\$50.00) for each and every such failure, to be recovered by any consignee aggrieved (or consignor, when it shall appear that the consignor was the owner of the property at the time of shipment and at the time of suit, and is, therefore, the party aggrieved), in any court of competent jurisdiction: Provided, that unless such consignee or consignor recover in such action the full amount claimed, no penalty shall be recovered, but only the actual amount of the loss or damage, with interest as aforesaid; and that no penalty shall be recoverable under the provisions of this section where claims have been filed by both the consignor and consignee, unless the time herein provided has elapsed after the withdrawal of one of the claims.

(d) A check shall be affixed to every parcel of baggage when taken for transportation by the agent or servant of a common carrier, if there is a



handle, loop or fixture so that the same can be attached upon the parcel or baggage so offered for transportation, and a duplicate thereof given to the passenger or person delivering the same on his behalf. If such check be refused on demand, the common carrier shall pay to such passenger the sum of ten dollars (\$10.00), to be recovered in a civil action; and further, no fare or toll shall be collected or received from such passenger, and if such passenger shall have paid his fare the same shall be refunded by the carrier.

(e) If a passenger, whose bag has been checked, shall produce the check and his baggage shall not be delivered to him, he may by an action recover the value of such baggage.

(f) Causes of action for the recovery of the possession of the property shipped, for loss or damage thereto, and for the penalties herein provided for, may be united in the same complaint.

(g) This section shall not deprive any consignee or consignor of any other rights or remedies existing against common carriers in regard to freight charges or claims for loss or damage to freight, but shall be deemed and held as creating an additional liability upon such common carriers.

(h) This section shall not apply to motor carriers of passengers and only subsection (a) of this section shall apply to motor carriers of property."

**Sec. 13.** G.S. 62-206 reads as rewritten:

"§ 62-206. *Carrier's right against prior carrier.*

Any common carrier shall have all the rights and remedies herein provided for against a common carrier from which it received the freight household goods in question. Provided, however, that this section shall not apply to motor carriers of passengers."

**Sec. 14.** G.S. 62-209 reads as rewritten:

"§ 62-209. *Sale of unclaimed baggage or freight; household goods; notice; sale of rejected property; escheat.*

(a) Any common carrier which has had in its possession on hand at any destination in this State any article whether baggage or freight, household goods, for a period of 60 days from its arrival at destination, which said carrier cannot deliver because unclaimed, may at the expiration of said 60 days sell the same at public auction at any point where in the opinion of the carrier the best price can be obtained: Provided, however, that notice of such sale shall be mailed to the consignor and consignee, by registered or certified mail, if known to such carrier, not less than 15 days before such sale shall be made; or if the name and address of the consignor and consignee cannot with reasonable diligence be ascertained by such carrier, notice of the sale shall be published once a week for two consecutive weeks in some newspaper of general circulation published at the point of sale: Provided, that if there is no such paper published at such point, the publication may be made in any paper having a general circulation in the State: Provided further, however, that if the nondelivery of said article is due to the consignee's and consignor's rejection of it, then such article may be sold by the carrier at public or private sale, and at such time and place as will in the carrier's judgment net the best price, and this without further notice to either consignee or consignor, and without the necessity of publication.

~~(b) Where the article referred to in this section is live freight, or perishable freight, or freight of such low value as would not bring the accrued transportation and other charges if held for 60 days as provided in this section, the common carrier may, with or without advertisement, sell the same in such manner and at such time and place as will in its judgment best protect the interests of the carrier, the consignor and the consignee, and whenever practicable the consignor and consignee shall be notified of the proposed sale of such freight.~~

(c) The common carrier shall keep a record of the articles sold and of the prices obtained therefor, and shall, after deducting all charges and the expenses of the sale, including advertisement, if advertised, pay the balance to the owner of such articles on demand therefor made at any time within five years from the date of the sale. If no person shall claim the surplus within five years, such surplus shall be paid to the Escheat Fund of the Department of State Treasurer.

(d) This section shall not apply to motor carriers of passengers."

**Sec. 15.** G.S. 62-211 is repealed.

**Sec. 16.** G.S. 62-260 reads as rewritten: \_\_\_\_\_

"§ 62-260. *Exemptions from regulations.*

(a) Nothing in this Chapter shall be construed to include persons and vehicles engaged in one or more of the following services by motor vehicle if not engaged at the time in the transportation of other passengers or other property by motor vehicle for compensation:

- (1) Transportation of passengers or property household goods for or under the control of the State of North Carolina, or any political subdivision thereof, or any board, department or commission of the State, or any institution owned and supported by the State;
- (2) Transportation of passengers by taxicabs when not carrying more than fifteen passengers or transportation by other motor vehicles performing bona fide taxicab service and not carrying more than fifteen passengers in a single vehicle at the same time when such taxicab or other vehicle performing bona fide taxicab service is not operated on a regular route or between termini; provided, no taxicab while operating over the regular route of a common carrier outside of a municipality and a residential and commercial zone adjacent thereto, as such zone may be determined by the Commission as provided in subdivision (8) of this subsection, shall solicit passengers along such route, but nothing herein shall be construed to prohibit a taxicab operator from picking up passengers along such route upon call, sign or signal from prospective passengers;
- (3) Transportation by motor vehicles owned or operated by or on behalf of hotels while used exclusively for the transportation of hotel patronage between hotels and local railroad or other common carrier stations;
- (4) Transportation of passengers to and from airports and passenger airline terminals when such transportation is incidental to transportation by aircraft;

- (5) Transportation of passengers by trolley buses operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street railway service;
- (6) Transportation by motor vehicles used exclusively for the transportation of passengers to or from religious services or transportation of pupils and employees to and from private or parochial schools or transportation to and from functions for students and employees of private or parochial schools;
- (7) Transportation of any bona fide employees to and from their place(s) of regular employment;
- (8) Transportation of passengers when the movement is within a municipality exclusively, or within contiguous municipalities and within a residential and commercial zone adjacent to and a part of such municipality or contiguous municipalities; provided, the Commission shall have power in its discretion, in any particular case, to fix the limits of any such zone;
- ~~(9) Transportation in bulk of sand, gravel, dirt, debris, and other aggregates, or ready-mixed paving materials for use in street or highway construction or repair;~~
- ~~(10) Transportation of newspapers;~~
- ~~(11) Transportation of insecticides, fungicides and the ingredients thereof; transportation of farm, dairy or orchard products from farm, dairy or orchard to warehouse, creamery, or other original storage or market;~~
- ~~(12) Transportation for and under the control of cooperative associations organized and operating under the Federal Agricultural Marketing Act, U.S.C.A. Title 12, § 1141(j), or under the State Cooperative Marketing Act, Chapter 54, Subchapter V, General Statutes of North Carolina, as amended, or for any federation of such cooperative associations; provided, such federation possesses no greater powers or purposes than such cooperative associations;~~
- ~~(13) Transportation of livestock, or fish, including shellfish and shrimp, but not including manufactured products thereof;~~
- ~~(14) Transportation of raw products of the forest, including firewood, logs, crossties, stave bolts, pulpwood, and rough lumber, but not including manufactured products therefrom;~~
- ~~(15) Pickup, delivery, and transfer service for railroads, express companies, water carriers and motor carriers in connection with their respective line-haul services within the commercial zone of any municipality, as defined by the Commission between their terminals and places of collection or delivery of freight;~~
- ~~(16) Transportation by a bona fide private carrier, as defined in G.S. 62-3(22);~~
- ~~(17) Transportation of any commodity anywhere of a character not hauled in the ordinary course of business by a common carrier by motor vehicle;~~
- (18) Charter parties, as defined by this subdivision when such charter party is sponsored or organized by, and used by, any organized

senior citizen group whose members are sixty (60) years of age or older. Such charter party shall be subject to subsections (f) and (g) of this section. 'Charter party', for the purpose of this subdivision, means a group of persons who, pursuant to a common purpose and under a single contract, and at a fixed charge for the vehicle, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group from a point of origin to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartering group after having left the place of origin.

(b) The Commission shall have jurisdiction to fix rates of carriers of passengers operating as described in (5) and (8) of subsection (a) of this section in the manner provided in this Chapter, and shall have jurisdiction to hear and determine controversies with respect to extensions and services, and the Commission's rules of practice shall include appropriate provisions for bringing such controversies before the Commission and for the hearing and determination of the same; provided nothing in this paragraph shall include taxicabs.

(c) The Commission may conduct investigations to determine whether any person purporting to operate under the exemption provisions of this section is, in fact, so operating, and make such orders as it deems necessary to enforce compliance with this section.

(d) The venue for any action commenced to enforce compliance with the terms of this Article against any person purporting to operate under any of the exemptions provided in this section shall be in one of the counties of the superior court district or set of districts as defined in G.S. 7A-41.1 wherein the violation is alleged to have taken place and such person shall be entitled to trial by jury.

(e) None of the provisions of this section nor any of the provisions of this Chapter shall be construed so as to prohibit or regulate the transportation of property by any motor carrier when the movement is within a municipality or within contiguous municipalities and within a zone adjacent to and commercially a part of such municipality or contiguous municipalities, as defined by the Commission. The Commission shall have the power in its discretion, in any particular case, to fix the limits of any such zone. Nothing herein shall be construed as an abridgment of the police powers of any municipality over such operation wholly within any such municipality. Nothing in this Chapter shall be construed to prohibit or regulate the transportation of household effects of families from one residence to another by persons who do not hold themselves out as being, and are not generally engaged in the business of transporting such property for compensation.

(f) Notwithstanding the exemption for transportation of passengers and ~~property~~ household goods provided under subsections (a) through (e) of this section, all motor carriers transporting passengers for compensation under said exemptions or under any special exemptions granted by the Utilities Commission under G.S. 62-261 shall be subject to the same requirements for security for protection of the public as are established for regulated motor common carriers by the rules of the Utilities Commission pursuant to G.S. 62-268, and all such motor carriers transporting for hire under said



exemption provisions shall further be subject to the same requirements for safety of operation of said motor vehicles as are required of regulated motor common carriers under the provisions of Chapter 20 and the regulations of the Division adopted pursuant thereto. The Division is authorized to promulgate rules and regulations for the enforcement of said requirements in the case of all such exempt operations, and the officers and agents of the Division shall have full authority to inspect said exempt vehicles and to apply all enforcement regulations and penalties for violation of said security regulations and safety regulations as in the case of regulated motor carriers.

(g) The owners of all motor vehicles used in any transportation for compensation which is declared to be exempt under this section shall register such operation with the Division of Motor Vehicles and shall secure from the Division of Motor Vehicles a certificate of exemption."

**Sec. 17.** G.S. 62-261 reads as rewritten:

*"§ 62-261. Additional powers and duties of Commission applicable to motor vehicles.*

The Commission is hereby vested with the following powers and duties:

- (1) To supervise and regulate bus companies and to that end, the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage, newspapers, mail and light express, uniform system of accounts, records and reports and preservation of records.
- (2) To supervise the operation and safety of passenger bus stations in any manner necessary to promote harmony among the carriers using such stations and efficiency of service to the traveling public.
- (3) Repealed by Session Laws 1985, c. 454, s. 12, effective June 24, 1985.
- (4) For the purpose of carrying out the provisions of this Article, the Utilities Commission may avail itself of the special information of the Board of Transportation in promulgating safety requirements and in considering applications for certificates or permits with particular reference to conditions of the public highway or highways involved, and the ability of the said public highway or highways to carry added traffic; and the Board of Transportation, upon request of the Utilities Commission, shall furnish such information.
- (5) The Commission may, without prior notice and hearing, make and enter any order, rule, regulation, or requirement, not affecting rates, upon unanimous finding by the Commission of the existence of an emergency and make such order, rule, regulation or requirement effective upon notice given to each affected motor carrier by registered mail, or by certified mail pending a hearing thereon as provided in this subdivision. It shall not be necessary for the Commission to give notice to the carriers affected or to hold a hearing prior to a revision in the rules regarding procedures to be followed in filing rates. Any such emergency order, rule, regulation or requirement shall be subject to continuation, modification, change, or revocation after notice



and hearing and all such emergency orders, rules, regulations and requirements shall be supplanted and superseded by any final order, rule, regulation or requirement entered by the Commission.

- (6) The Commission shall regulate brokers and make and enforce reasonable requirements respecting their licenses, financial responsibility, accounts, records, reports, operations and practices.
- (7) Repealed by Session Laws 1985, c. 454, s. 12, effective June 24, 1985.
- (8) To determine, upon its own motion, or upon motion by a motor carrier, or any other party in interest, whether the transportation of ~~property~~ household goods in intrastate commerce performed by any motor carrier or class of motor carriers lawfully engaged in operation in this State is in fact of such nature, character, or quantity as not substantially to affect or impair uniform regulation by the Commission of transportation by motor carriers engaged in intrastate commerce. Upon so finding, the Commission shall issue a certificate of exemption to such motor carrier or class of motor carriers which, during the period such certificate shall remain effective and unrevoked, shall exempt such carrier or class of motor carriers from compliance with the provisions of this Article, and shall attach to such certificate such reasonable terms and conditions as the public interest may require. At any time after the issuance of any such certificate of exemption, the Commission may by order revoke all or any part thereof, if it shall find that the transportation in intrastate commerce performed by the carrier or class of carriers designated in such certificate will be, or shall have become, or is reasonably likely to become, of such nature, character, or quantity as in fact substantially to affect or impair uniform regulation by the Commission of intrastate transportation by motor carriers in effectuating the policy declared in this Chapter. Upon revocation of any such certificate, the Commission shall restore to the carrier or carriers affected thereby, without further proceedings, the authority, if any, to operate in intrastate commerce held by such carrier or carriers at the time the certificate of exemption pertaining to such carrier or carriers became effective. No certificate of exemption shall be denied, and no order of revocation shall be issued, under this paragraph, except after reasonable opportunity for hearing to interested parties.
- (9) To inquire into the management of the business of motor carriers and into the management of business of persons controlling, controlled by or under common control with, motor carriers to the extent that such persons have a pecuniary interest in the business of one or more motor carriers, and the Commission shall keep itself informed as to the manner and method in which the same are conducted, and may obtain from such carriers and

persons such information as the Commission deems necessary to carry out the provisions of this Article.

(10) Repealed by Session Laws 1985, c. 454, s. 12, effective June 24, 1985.

(11) The Commission may from time to time establish such just and reasonable classifications of groups of carriers included in the term 'common carrier by motor vehicle' ~~or contract carrier by motor vehicle~~ as the special nature of the service performed by such carriers shall require; and such just and reasonable rules, regulations, and requirements, consistent with the provisions of this Article, to be observed by such carriers so classified or grouped, as the Commission deems necessary or desirable in the public interest."

Sec. 18. G.S. 62-262 reads as rewritten:

"§ 62-262. *Applications and hearings other than for bus companies.*

(a) Except as otherwise provided in G.S. 62-260[,] G.S. 62-262.1 and 62-265, no person shall engage in the transportation of passengers or ~~property~~ household goods in intrastate commerce unless such person shall have applied to and obtained from the Commission a certificate ~~or permit~~ authorizing such operations, and it shall be unlawful for any person knowingly or wilfully to operate in intrastate commerce in any manner contrary to the provisions of this Article, or of the rules and regulations of the Commission. No certificate ~~or permit~~ shall be amended so as to enlarge or in any manner extend the scope of operations of a motor carrier without complying with the provisions of this section.

(b) Upon the filing of an application for a ~~certificate or a permit,~~ certificate, the Commission shall, within a reasonable time, fix a time and place for hearing such application. ~~For applications by contract carriers of passengers, the Commission shall cause notice of the time and place of hearing to be given by mail to the applicant, to other motor carriers holding certificates or permits to operate in the territory proposed to be served by the application, and to other motor carriers who have pending applications to so operate.~~ The Commission shall from time to time prepare a truck calendar containing notice of such hearings, a copy of which shall be mailed to the applicant and to any other persons desiring it, upon payment of charges to be fixed by the Commission. The notice or calendar herein required shall be mailed at least 20 days prior to the date fixed for the hearing, but the failure of any person, other than applicant, to receive such notice or calendar shall not, for that reason, invalidate the action of the Commission in granting or denying the application.

(c) The Commission may, in its discretion, except where a regular calendar providing notice is issued, require the applicant to give notice of the time and place of such hearing together with a brief description of the purpose of said hearing and the exact route or routes and authority applied for, to be published not less than once each week for two successive weeks in one or more newspapers of general circulation in the territory proposed to be served. The Commission may in its discretion require the applicant to give such other and further notice in the form and manner prescribed by the Commission to the end that all interested parties and the general public may

have full knowledge of such hearing and its purpose. If the Commission requires the applicant to give notice by publication, then a copy of such notice shall be immediately mailed by the applicant to the Commission, and upon receipt of same the chief clerk shall cause the copy of notice to be entered in the Commission's docket of pending proceedings. The applicant shall, prior to any hearing upon his application, be required to satisfy the Commission that such notice by publication has been duly made, and in addition to any other fees or costs required to be paid by the applicant, the applicant shall pay into the office of the Commission the cost of the notices herein required to be mailed by the Commission.

(d) Any motor carrier desiring to protest the granting of an application for a ~~certificate or permit~~, certificate, in whole, or in part, may become a party to such proceedings by filing with the Commission, not less than 10 days prior to the date fixed for the hearing, unless the time be extended by order of the Commission, its protest in writing under oath, containing a general statement of the grounds for such protest and the manner in which the protestant will be adversely affected by the granting of the application in whole or in part. Such protestant may also set forth in his protest its proposal, if any, to render either alone or in conjunction with other motor carriers, the service proposed by the applicant, either in whole or in part. Upon the filing of such protest it shall be the duty of the protestant to file three copies with the Commission, and the protestant shall certify that a copy of said protest has been delivered or mailed to the applicant or applicant's attorney. When no protest is filed with the Commission within the time herein limited, or as extended by order of the Commission, the Commission may proceed to decide the application on the basis of testimony taken at a hearing, or on the basis of information contained in the application and sworn affidavits, and make the necessary findings of fact and issue or decline to issue the certificate ~~or permit~~ applied for without further notice. Persons other than motor carriers shall have the right to appear before the Commission and give evidence in favor of or against the granting of any application and with permission of the Commission may be accorded the right to examine and cross-examine witnesses.

(e) ~~If the application is for a certificate, the~~ The burden of proof shall be upon the applicant for a certificate to show to the satisfaction of the Commission:

- (1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and
- (2) That the applicant is fit, willing and able to properly perform the proposed service, and
- (3) That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

(f) to (h) Repealed by Session Laws 1985, c. 676, s. 19, effective July 10, 1985.

(i) ~~If the application is for a permit, the Commission shall give due consideration to:~~

- (1) ~~Whether the proposed operations conform with the definition in this Chapter of a contract carrier,~~

- (2) ~~Whether the proposed operations will unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers,~~
- (3) ~~Whether the proposed service will unreasonably impair the use of the highways by the general public,~~
- (4) ~~Whether the applicant is fit, willing and able to properly perform the service proposed as a contract carrier,~~
- (5) ~~Whether the proposed operations will be consistent with the public interest and the policy declared in this Chapter, and~~
- (6) ~~Other matters tending to qualify or disqualify the applicant for a permit.~~

~~(j) After the issuance of a permit for the transportation of passengers, as provided in this section, such permit may thereafter be amended, changed or modified, by requiring the holder to furnish more or less transportation service, or by changing the routes over which service has been authorized, or by imposing other reasonable terms, conditions, restrictions, and limitations as public convenience and necessity or reasonable regulation of traffic upon the highways may require; provided, that the procedure in all such cases as to notice and hearing shall be the same as provided in this section for the issuance of a permit.~~

(k) The Commission shall by general order, or rule, having regard for the public convenience and necessity, provide for the abandonment or permanent or temporary discontinuance of transportation service previously authorized in a certificate.

(l) The provisions of this section shall not be applicable to applications for certificates of authority by bus companies or related hearings."

Sec. 19. G.S. 62-264 is repealed.

Sec. 20. G.S. 62-265 reads as rewritten:

"§ 62-265. *Emergency operating authority.*

To meet unforeseen emergencies, the Commission may, upon its own initiative, or upon written request by any person, department or agency of the State, or of any county, city or town, with or without a hearing, grant appropriate authority to any owner of a duly licensed vehicle or vehicles, whether such owner holds a certificate or permit or not, to transport passengers or property, baggage, mail, newspapers and light express household goods between such points, or within such area during the period of the emergency and to the extent necessary to relieve the same, as the Commission may fix in its order granting such authority; provided, that unless the emergency is declared by the General Assembly or under its authority, the Commission shall find from such request, or from its own knowledge or conditions, that a real emergency exists and that relief to the extent authorized in its order is immediate, pressing and necessary in the public interest, and that the carrier so authorized has the necessary equipment and is willing to perform the emergency service as prescribed by the order. In all cases, under this section, the Commission shall first afford the holders of certificates or permits operating in the territory affected an opportunity to render the emergency service. Upon the termination of the emergency, the operating privileges so granted shall automatically expire and



the Commission shall forthwith withdraw all operating privileges granted to any person under this section."

**Sec. 21.** G.S. 62-267(b) is repealed.

**Sec. 22.** G.S. 62-268 reads as rewritten:

"§ 62-268. *Security for protection of public; liability insurance.*

No ~~certificate, permit~~ certificate or broker's license shall be issued or remain in force until the applicant shall have procured and filed with the Division of Motor Vehicles such security bond, insurance or self-insurance for the protection of the public as the Commission shall by regulation require. The Commission shall require that every motor carrier for which a ~~certificate, permit, certificate~~ or license is required by the provision of this Chapter, shall maintain liability insurance or satisfactory surety of at least fifty thousand dollars (\$50,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, one hundred thousand dollars (\$100,000) because of bodily injury to or death of two or more persons in any one accident, and fifty thousand dollars (\$50,000) because of injury to or destruction of property of others in any one accident; and the Commission may require any greater amount of insurance as may be necessary for the protection of the public. Notwithstanding any rule or regulation to the contrary, the Commission shall not require that any insurance procured and filed be provided in any single policy of insurance or through a single insurer, if the insurers involved are otherwise qualified. A motor carrier may satisfy the requirements of the Commission by procuring insurance with coverage and limits of liability required by the Commission in one or more policies of insurance issued by one or more insurers.

Notwithstanding any other provisions of this section or Chapter, bus companies shall file with the Commission proof of financial responsibility in the form of bonds, policies of insurance, or shall qualify as a self insurer, with minimum levels of financial responsibility as prescribed for motor carriers of passengers pursuant to the provisions of 49 U.S.C. § 10927(a)(1). Provided, further, that no bus company operating solely within the State of North Carolina and which is exempt from regulation under the provisions of G.S. 62-260(a)(7) shall be required to file with the Commission proof of the financial responsibility in excess of one million five hundred thousand dollars (\$1,500,000)."

**Sec. 23.** G.S. 62-270 reads as rewritten:

"§ 62-270. *Orders, notices, and service of process.*

It shall be the duty of every motor carrier operating under a certificate or ~~permit~~ issued under the provisions of this Article to file with the Division of Motor Vehicles a designation in writing of the name and post-office address of a person upon whom service of notices or orders may be made under this Article. Such designation may from time to time be changed by like writing similarly filed. Service of notice or orders in proceedings under this Article may be made upon a motor carrier by personal service upon it or upon the person so designated by it, or by registered mail, return receipt requested, or by certified mail with return receipt requested, addressed to it or to such person at the address filed. In proceedings before the Commission involving the lawfulness of rates, charges, classifications, or practices, service of



notice upon the person or agent who has filed a tariff or schedule in behalf of such carrier shall be deemed to be due and sufficient service upon the carrier."

Sec. 24. G.S. 62-271 reads as rewritten:

"§ 62-271. *Collection of rates and charges of motor carriers of property household goods.*

No common carriers of property household goods by motor vehicle shall deliver or relinquish possession at destination of any freight transported by it in intrastate commerce until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to govern the settlement of all such rates and charges, including rules and regulations for weekly or monthly settlement, and to prevent unjust discrimination or undue preference or prejudice; provided, that the provisions of this section shall not be construed to prohibit any such carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for the State, or political subdivision thereof. Where any common carrier by motor vehicle is instructed by a shipper or consignor to deliver property household goods transported by such carrier to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of such property household goods (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has household goods have been delivered to him, if the consignee (i) is an agent only and had no beneficial title in the property household goods, and (ii) prior to delivery of the property household goods has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of the property household goods. In such cases the shipper and consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner shall be liable for such additional charges, irrespective of any provisions to the contrary in the bill of lading or in the contract under which the shipment was made. If the consignee has given to the carrier erroneous information as to who is the beneficial owner, such consignee shall himself be liable for such additional charges, notwithstanding the foregoing provisions of this section. On shipments reconsigned or diverted by an agent who has furnished the carrier with a notice of agency and the proper name and address of the beneficial owner, and where such shipments are refused or abandoned at ultimate destination, the said beneficial owner shall be liable for all legally applicable charges in connection therewith."

Sec. 25. G.S. 62-272 reads as rewritten:

"§ 62-272. *Allowance to shippers for transportation services.*

If the owner of property household goods transported under the provisions of this Article directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be published in the tariffs or schedules filed in the

manner provided in this Article and shall be no more than is just and reasonable; and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order."

**Sec. 26.** G.S. 62-273 reads as rewritten:

"§ 62-273. *Embezzlement of C.O.D. shipments.*

Property Household goods received by any motor carrier to be transported in intrastate commerce and delivered upon collection on such delivery and remittance to the shipper of the sum of money stated in the shipping instructions to be collected and remitted to the shipper, and the money collected upon delivery of such party, ~~is~~ are hereby declared to be held in trust by any carrier having possession thereof or the carrier making the delivery or collection, and upon failure of any such carrier to account for the property household goods so received, either to the shipper to whom the collection is payable or the carrier making delivery to any carrier handling the property household goods or making the collection, within 15 days after demand in writing by the shipper, or carrier, or upon failure of the delivering carrier to remit the sum so directed to be collected and remitted to the shipper, within 15 days after collection is made, shall be prima facie evidence that the property household goods so received, or the funds so received, ~~has~~ have been wilfully converted by such carrier to its own use, and the carrier so offending shall be guilty of a Class H felony and such carrier may be indicted, tried, and punished in the county in which such shipment was delivered to the carrier or in any other county into or through which such shipment was transported by such carrier."

**Sec. 27.** G.S. 62-278(a) reads as rewritten:

"(a) The license plates of any carrier of persons or property household goods by motor vehicle for compensation may be revoked and removed from the vehicles of any such carrier for wilful violation of any provision of this Chapter, or for the wilful violation of any lawful rule or regulation made and promulgated by the Utilities Commission. To that end the Commission shall have power upon complaint or upon its own motion, after notice and hearing, to order the license plates of any such offending carrier revoked and removed from the vehicles of such carrier for a period not exceeding 30 days, and it shall be the duty of the Department of Motor Vehicles to execute such orders made by the Utilities Commission upon receipt of a certified copy of the same."

**Sec. 28.** G.S. 62-279 reads as rewritten:

"§ 62-279. *Injunction for unlawful operations.*

If any motor carrier, or any other person or corporation, shall operate a motor vehicle in violation of any provision of this Chapter applicable to motor carriers or motor vehicles generally, except as to the reasonableness of rates or charges and the discriminatory character thereof, or shall operate in violation of any rule, regulation, requirement or order of the Commission, or of any term or condition of any ~~certificate or permit~~, certificate, the Commission or any holder of a certificate or ~~permit~~ duly issued by the Commission may apply to a superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or 7A-48 in the district or set of

districts as defined in G.S. 7A-41.1 in which the motor carrier or other person or corporation so operates, for the enforcement of any provisions of this Article, or of any rule, regulation, requirement, order, term or condition of the Commission. Such court shall have jurisdiction to enforce obedience to this Article or to any rule, order, or decision of the Commission by a writ of injunction or other process, mandatory or otherwise, restraining such carrier, person or corporation, or its officers, agents, employees and representatives from further violation of this Article or of any rule, order, regulation, or decision of the Commission."

**Sec. 29.** G.S. 62-300(a) reads as rewritten:

"(a) The Commission shall receive and collect the following fees and charges in accordance with the classification of utilities as provided in rules and regulations of the Commission, and no others:

- (1) Twenty-five dollars (\$25.00) with each notice of appeal to the Court of Appeals or the Supreme Court, and with each notice of application for a writ of certiorari.
- (2) With each application for a new certificate ~~or new permit~~ for motor and rail carrier rights, the fee shall be two hundred fifty dollars (\$250.00) when filed by Class 1 motor and rail carriers, one hundred dollars (\$100.00) when filed by Class 2 motor and rail carriers, and twenty-five dollars (\$25.00) when filed by Class 3 motor and rail carriers, and twenty-five dollars (\$25.00) as filing fee for any amendment thereto so as to extend or enlarge the scope of operations thereunder, and twenty-five dollars (\$25.00) for each broker who applies for a brokerage license under the provisions of this Chapter.
- (3) With each application for a general increase in rates, fares and charges and for each filing of a tariff which seeks general increases in rates, fares and charges, the fee will be five hundred dollars (\$500.00) for Class A utilities and Class 1 motor and rail carriers, two hundred fifty dollars (\$250.00) for Class B utilities and Class 2 motor and rail carriers, one hundred dollars (\$100.00) for Class C utilities and twenty-five dollars (\$25.00) for Class D utilities and Class 3 motor and rail carriers; provided that in the case of an application or tariff for a general increase in rates filed by a tariff agent for more than one carrier, the applicable fee shall be the highest fee prescribed for any motor carrier included in the application or tariff. This fee shall not apply to applications for adjustments in particular rates, fares, or charges for the purpose of eliminating inequities, preferences or discriminations or to applications to adjust rates and charges based solely on the increased cost of fuel used in the generation or production of electric power.
- (4) One hundred dollars (\$100.00) with each application for discontinuance of train service, or for a change in or discontinuance of station facilities and with each application by motor carrier of passengers for the abandonment or permanent or temporary discontinuance of transportation service previously authorized in a certificate.

- (5) With each application for a certificate of public convenience and necessity or for any amendment thereto so as to extend or enlarge the scope of operations thereunder, the fee shall be two hundred fifty dollars (\$250.00) for Class A utilities, one hundred dollars (\$100.00) for Class B utilities, and twenty-five dollars (\$25.00) for Class C and D utilities and twenty-five dollars (\$25.00) for any other person seeking a certificate of public convenience and necessity.
- (5a) With each application by a bus company for an original certificate of authority or for any amendment thereto or to an existing certificate of public convenience and necessity so as to extend or enlarge the scope of operations thereunder the fee shall be two hundred fifty dollars (\$250.00).
- (6) With each application for approval of the issuance of securities or for the approval of any sale, lease, hypothecation, lien, or other transfer of any ~~property~~ household goods or operating rights of any carrier or public utility over which the Commission has jurisdiction, the fee shall be two hundred fifty dollars (\$250.00) for Class A utilities and Class 1 motor and rail carriers, one hundred dollars (\$100.00) for Class B utilities and Class 2 motor and rail carriers, and twenty-five dollars (\$25.00) for Class C and D utilities and Class 3 motor and rail carriers; provided, that in the case of sales, leases and transfers between two or more carriers or utilities, the applicable fee shall be the highest fee prescribed for any party to the transaction.
- (7) Ten dollars (\$10.00) with each application, petition, or complaint not embraced in (2) through (6) of this section, wherein such application, petition, or complaint seeks affirmative relief against a carrier or public utility over which the Commission has jurisdiction. This fee shall not apply to applications for adjustments in particular rates, fares or charges for the purpose of eliminating inequities, preferences or discriminations; nor shall this fee apply to applications, petitions, or complaints made by any county, city or town; nor shall this fee apply to applications or petitions made by individuals seeking service or relief from a public utility.
- (8) Repealed by Session Laws 1985, c. 454, s. 18.
- (9) One dollar (\$1.00) for each page (8 1/2 x 11 inches) of transcript of testimony, but not less than five dollars (\$5.00) for any such transcript.
- (10) Twenty cents (20¢) for each page of copies of papers, orders, certificates or other records, but not less than one dollar (\$1.00) for any such order or record, plus five dollars (\$5.00) for formal certification of any such paper, order or record.
- (11), (12) Repealed by Session Laws 1985, c. 454, s. 18.
- (13) Two hundred fifty dollars (\$250.00) with each application for a certificate of public convenience and necessity to construct a transmission line.



- (14) Twenty-five dollars (\$25.00) with each filing by a person otherwise exempt from Commission regulation under Public Law 103-305 to participate in standard transportation practices as set out by the Commission."

Sec. 30. G.S. 62-320 is repealed.

Sec. 31. Article 6A of Chapter 62 of the General Statutes, G.S. 62-119 through G.S. 62-125, is repealed.

Sec. 32. Effective August 1, 1995, G.S. 62-300(a), as rewritten by Section 29 of this act, reads as rewritten:

"(a) The Commission shall receive and collect the following fees and charges in accordance with the classification of utilities as provided in rules and regulations of the Commission, and no others:

- (1) Twenty-five dollars (\$25.00) with each notice of appeal to the Court of Appeals or the Supreme Court, and with each notice of application for a writ of certiorari.
- (2) With each application for a new certificate for motor and rail carrier rights, the fee shall be two hundred fifty dollars (\$250.00) when filed by Class 1 motor and rail carriers, one hundred dollars (\$100.00) when filed by Class 2 motor and rail carriers, and twenty-five dollars (\$25.00) when filed by Class 3 motor and rail carriers, and twenty-five dollars (\$25.00) as filing fee for any amendment thereto so as to extend or enlarge the scope of operations thereunder, and twenty-five dollars (\$25.00) for each broker who applies for a brokerage license under the provisions of this Chapter.
- (3) With each application for a general increase in rates, fares and charges and for each filing of a tariff which seeks general increases in rates, fares and charges, the fee will be five hundred dollars (\$500.00) for Class A utilities and Class 1 motor and rail carriers, two hundred fifty dollars (\$250.00) for Class B utilities and Class 2 motor and rail carriers, one hundred dollars (\$100.00) for Class C utilities and twenty-five dollars (\$25.00) for Class D utilities and Class 3 motor and rail carriers; provided that in the case of an application or tariff for a general increase in rates filed by a tariff agent for more than one carrier, the applicable fee shall be the highest fee prescribed for any motor carrier included in the application or tariff. This fee shall not apply to applications for adjustments in particular rates, fares, or charges for the purpose of eliminating inequities, preferences or discriminations or to applications to adjust rates and charges based solely on the increased cost of fuel used in the generation or production of electric power.
- (4) ~~One hundred dollars (\$100.00) with each application for discontinuance of train service, or for a change in or discontinuance of station facilities and with each application by~~ motor carrier of passengers for the abandonment or permanent or temporary discontinuance of transportation service previously authorized in a certificate.



- (4a) Two hundred fifty dollars (\$250.00) with each application for discontinuance of train service, or for a change in or discontinuance of station facilities.
- (5) With each application for a certificate of public convenience and necessity or for any amendment thereto so as to extend or enlarge the scope of operations thereunder, the fee shall be two hundred fifty dollars (\$250.00) for Class A utilities, one hundred dollars (\$100.00) for Class B utilities, and twenty-five dollars (\$25.00) for Class C and D utilities and twenty-five dollars (\$25.00) for any other person seeking a certificate of public convenience and necessity.
- (5a) With each application by a bus company for an original certificate of authority or for any amendment thereto or to an existing certificate of public convenience and necessity so as to extend or enlarge the scope of operations thereunder the fee shall be two hundred fifty dollars (\$250.00).
- (6) With each application for approval of the issuance of securities or for the approval of any sale, lease, hypothecation, lien, or other transfer of any household goods or operating rights of any carrier or public utility over which the Commission has jurisdiction, the fee shall be two hundred fifty dollars (\$250.00) for Class A utilities and Class 1 motor and rail carriers, one hundred dollars (\$100.00) for Class B utilities and Class 2 motor and rail carriers, and twenty-five dollars (\$25.00) for Class C and D utilities and Class 3 motor and rail carriers; provided, that in the case of sales, leases and transfers between two or more carriers or utilities, the applicable fee shall be the highest fee prescribed for any party to the transaction.
- (7) Ten dollars (\$10.00) with each application, petition, or complaint not embraced in (2) through (6) of this section, wherein such application, petition, or complaint seeks affirmative relief against a carrier or public utility over which the Commission has jurisdiction. This fee shall not apply to applications for adjustments in particular rates, fares or charges for the purpose of eliminating inequities, preferences or discriminations; nor shall this fee apply to applications, petitions, or complaints made by any county, city or town; nor shall this fee apply to applications or petitions made by individuals seeking service or relief from a public utility.
- (8) Repealed by Session Laws 1985, c. 454, s. 18.
- (9) One dollar (\$1.00) for each page (8 1/2 x 11 inches) of transcript of testimony, but not less than five dollars (\$5.00) for any such transcript.
- (10) Twenty cents (20¢) for each page of copies of papers, orders, certificates or other records, but not less than one dollar (\$1.00) for any such order or record, plus five dollars (\$5.00) for formal certification of any such paper, order or record.
- (11), (12) Repealed by Session Laws 1985, c. 454, s. 18.

- (13) Two hundred fifty dollars (\$250.00) with each application for a certificate of public convenience and necessity to construct a transmission line.
- (14) Twenty-five dollars (\$25.00) with each filing by a person otherwise exempt from Commission regulation under Public Law 103-305 to participate in standard transportation practices as set out by the Commission."

**Sec. 32.1.** The catchline to G.S. 105-449.105, as enacted by Section 3 of Chapter 390 of the 1995 Session Laws, reads as rewritten:

"§ 105-449.105. Refunds upon application for tax paid on exempt fuel, lost fuel, and fuel fuel unsalable for highway use, use, and undyed diesel fuel used in boats."

**Sec. 32.2.** G.S. 105-449.105, as enacted by Section 3 of Chapter 390 of the 1995 Session Laws, is amended by relettering subsection (d) as subsection (e) and adding a new subsection (d) to read:

"(d) Marina. -- A marina may obtain a refund of tax paid by the marina on undyed diesel fuel purchased for use in a boat or another marine vessel. The refund applies only to undyed diesel fuel delivered at the time of purchase into a storage facility that is marked 'For Boat Use Only' or another phrase that clearly indicates the fuel is not to be used to operate a highway vehicle."

**Sec. 33.** Sections 32.1 and 32.2 of this act become effective January 1, 1996. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 24

## CHAPTER 524

### AN ACT TO REFOCUS THE SCHOOL TESTING PROGRAM ON THE BASICS.

*The General Assembly of North Carolina enacts:*

**Section 1.** Part 1 of Article 10A of Chapter 115C of the General Statutes is repealed.

**Sec. 2.** G.S. 115C-174.10 reads as rewritten:

"§ 115C-174.10. *Purposes of the Statewide Testing Program.*

The three testing programs in this Article have three purposes: (i) to assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function as a member of society; (ii) to provide a means of identifying strengths and weaknesses in the education process; process in order to improve instructional delivery; and (iii) to establish additional means for making the education system at the State, local, and school levels accountable to the public for results."

**Sec. 3.** G.S. 115C-174.11 reads as rewritten:

"§ 115C-174.11. *Components of the testing program.*

(a) Annual Testing Program. Assessment Instruments for First and Second Grades. -- The State Board of Education shall adopt and provide to the local school administrative units developmentally appropriate individualized assessment instruments consistent with the Basic Education

Program for the first and second grades, rather than standardized tests. Local school administrative units may use these assessment instruments provided to them by the State Board for first and second grade students, and shall not use standardized tests. ~~The State Board of Education shall report to the Joint Legislative Commission on Governmental Operations prior to May 1, 1988, and to the Senate and House Appropriations Committees on Education prior to March 1, 1989, on the assessment instruments it develops.~~

~~If the State Board of Education finds that testing in grades other than the first and second grade is necessary to allow comparisons with national indicators of student achievement, that testing shall be conducted with the smallest size sample of students necessary to assure valid comparisons with other states.~~

(b) Competency Testing Program.

- (1) The State Board of Education shall adopt tests or other measurement devices which may be used to assure that graduates of the public high schools and graduates of nonpublic schools supervised by the State Board of Education pursuant to the provisions of Part 1 of Article 39 of this Chapter possess the skills and knowledge necessary to function independently and successfully in assuming the responsibilities of citizenship.
- (2) The tests shall be administered annually to all tenth grade students in the public schools. Students who fail to attain the required minimum standard for graduation in the tenth grade shall be given remedial instruction and additional opportunities to take the test up to and including the last month of the twelfth grade. Students who fail to pass parts of the test shall be retested on only those parts they fail. Students in the tenth grade who are enrolled in special education programs or who have been officially designated as eligible for participation in such programs may be excluded from the testing programs.
- (3) The State Board of Education may develop and validate alternate means and standards for demonstrating minimum competence. These standards, which must be more difficult than the tests adopted pursuant to subdivision (1) of this subsection, may be passed by students in lieu of the testing requirement of subdivision (2) of this subsection.
- (4) Funds appropriated for the purpose of remediation support for students who fail the high school competency test shall be distributed in accordance with rules promulgated by the State Board of Education. The State Board of Education shall allocate remediation funds to institutions administered by the Department of Human Resources on the same basis as funds allocated to other local education agencies.

(c) ~~End-of-course and End-of-grade Tests.~~ — Annual Testing Program.

- (1) The State Board of Education shall adopt a system of ~~end-of-course and end-of-grade tests~~ annual testing for grades three through 12. These tests shall be designed to measure progress toward reading, communication skills, and mathematics for grades three through

eight, and toward competencies designated by the State Board for grades nine through 12. ~~selected competencies, especially core academic competencies, described in the Standard Course of Study for appropriate grade levels. With regard to students who are identified as not demonstrating satisfactory academic progress, end-of-course and end-of-grade test results shall be used in developing strategies and plans for assisting those students in achieving satisfactory academic progress.~~

- (2) If the State Board of Education finds that additional testing in grades three through 12 is desirable to allow comparisons with national indicators of student achievement, that testing shall be conducted with the smallest size sample of students necessary to assure valid comparisons with other states."

Sec. 4. G.S. 115C-174.12 reads as rewritten:

"§ 115C-174.12. *Responsibilities of agencies.*

(a) The State Board of Education shall review the recommendations of the Commission on Testing and tests being administered through State and local testing programs and shall select the tests that it believes will be necessary to provide the best measures of the levels of academic achievement attained by students in various subject areas. The State Board of Education shall also establish policies and guidelines necessary for minimizing the time students spend taking tests administered through State and local testing programs and for otherwise carrying out the provisions of this Article.

The State Board of Education may appoint an Advisory Council on Testing to assist in carrying out its responsibilities under this Article.

(b) The Superintendent of Public Instruction shall be responsible, under policies adopted by the State Board of Education, for the statewide administration of the testing program provided by this Article and for providing necessary staff services to the Commission, Article.

(c) Local boards of education shall cooperate with the State Board of Education in implementing the provisions of this Article, including the regulations and policies established by the State Board of Education. Local school administrative units shall use the annual and competency testing programs to fulfill the purposes set out in this Article. Local school administrative units are encouraged to continue to develop local testing programs designed to diagnose student needs further."

Sec. 5. Except as provided in G.S. 115C-174.11(c)(2), the State Board of Education shall adopt no new tests until it receives the report on standards and a system of assessment, which is due no later than July 1, 1996, from the North Carolina Education Standards and Accountability Commission. Pending the receipt of this report, the State Board of Education shall consider reducing the number of tests currently administered by the State.

Sec. 6. The State Board of Education shall consider the recommendations of the North Carolina Education Standards and Accountability Commission in its report that is due by July 1, 1996, and, based on this consideration, the State Board shall review the tests being administered through State and local testing programs, determine the strengths and weaknesses of those programs, and report to the General



Assembly by December 1, 1996, on its recommendations on how to measure best the academic achievements of public school students and the effectiveness of public school teachers. In the course of this study, the State Board may consider issues including the following:

- (1) The best way to measure academic achievement of North Carolina students and at the same time provide a meaningful comparison with students in other states;
- (2) Ways to measure the increase in individual student's knowledge or abilities over the course of an academic year and to compare end-of-year results with goals for individual students; and
- (3) Ways to measure the effectiveness of teachers by focusing on the academic achievements of the teachers' students.

The State Board of Education shall also consider the use of nationally standardized achievement tests rather than tests created for the North Carolina public schools. If the State Board determines that tests created for the North Carolina public schools are preferable, the State Board shall include in its report to the General Assembly the reasons those tests offer significantly greater benefits in measuring student performance.

**Sec. 7.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 84

## CHAPTER 525

### AN ACT TO PLACE TIME LIMITS ON OPTIONS IN GROSS AND OTHER INTERESTS IN LAND, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

*The General Assembly of North Carolina enacts:*

**Section 1.** Chapter 41 of the General Statutes is amended by designating the existing provisions as Article 1, "Survivorship Rights and Future Interests", and by adding a new Article to read:

#### "ARTICLE 3.

#### "Time Limits on Options in Gross and Certain Other Interests in Land.

##### "§ 41-28. Definitions.

As used in this Article:

- (1) 'Nonvested easement in gross' means a nonvested easement which is not created to benefit or which does not benefit the possessor of any tract of land in his or her use of it as the possessor.
- (2) 'Option in gross with respect to an interest in land' means an option in which the holder of the option does not own any leasehold or other interest in the land which is the subject of the option.
- (3) 'Preemptive right in the nature of a right of first refusal in gross with respect to an interest in land' means a preemptive right in which the holder of the preemptive right does not own any leasehold or other interest in the land which is the subject of the preemptive right.



"§ 41-29. Options in gross, etc.

An option in gross with respect to an interest in land or a preemptive right in the nature of a right of first refusal in gross with respect to an interest in land becomes invalid if it is not actually exercised within 30 years after its creation. For purposes of this section, the term 'interest in land' does not include arrangements relating solely to an interest in oil, gas, or minerals.

"§ 41-30. Leases to commence in the future.

A lease to commence at a time certain or upon the occurrence or nonoccurrence of a future event becomes invalid if its term does not actually commence in possession within 30 years after its execution. For purposes of this section, the term 'lease' does not include an oil, gas, or mineral lease.

"§ 41-31. Nonvested easements.

A nonvested easement in gross becomes invalid if it does not actually vest within 30 years after its creation.

"§ 41-32. Possibilities of reverter, etc.

(a) Except as otherwise provided in this section:

- (1) A possibility of reverter preceded by a fee simple determinable;
  - (2) A right of entry preceded by a fee simple subject to a condition subsequent; or
  - (3) An executory interest preceded by either a fee simple determinable or a fee simple subject to an executory limitation;
- becomes invalid, and the preceding fee simple becomes a fee simple absolute, if the right to vest in possession of the possibility of reverter, right of entry, or executory interest depends on an event or events affecting the use of land and if the possibility of reverter, right of entry, or executory interest does not actually vest in possession within 60 years after its creation.

(b) This section does not apply to a possibility of reverter, right of entry, or executory interest held by a charity, a government or governmental agency or subdivision excluded from the Uniform Statutory Rule Against Perpetuities by G.S. 41-18(5) or to an arrangement relating solely to an interest in oil, gas, or minerals.

"§ 41-33. Prospective application.

This Article applies only to a property interest or arrangement that is created on or after October 1, 1995."

**Sec. 2.** The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Commentary to the Uniform Rule Against Perpetuities Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

**Sec. 3.** This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

USE A PORTION OF THE FUNDS APPROPRIATED TO IT FOR 1995-97 FOR A PARTICULAR PURPOSE.

*The General Assembly of North Carolina enacts:*

**Section 1.** Of the funds appropriated from the General Fund to the Department of Environment, Health, and Natural Resources for the 1995-97 fiscal biennium, the Department shall allocate the sum of fifty thousand dollars (\$50,000) for the 1995-96 fiscal year and the sum of fifty thousand dollars (\$50,000) for the 1996-97 fiscal year to create a position to provide staff support for the Advisory Committee on Cancer Coordination and Control.

**Sec. 2.** This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 402

## CHAPTER 527

AN ACT TO STRENGTHEN THE DOMESTIC VIOLENCE LAWS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 50B-3 reads as rewritten:

"§ 50B-3. *Relief.*

(a) The court may grant any protective order or approve any consent agreement to bring about a cessation of acts of domestic violence. The orders or agreements may:

- (1) Direct a party to refrain from such acts;
- (2) Grant to a spouse possession of the residence or household of the parties and exclude the other spouse from the residence or household;
- (3) Require a party to provide a spouse and his or her children suitable alternate housing;
- (4) Award temporary custody of minor children and establish temporary visitation rights;
- (5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it;
- (6) Order either party to make payments for the support of a minor child as required by law;
- (7) Order either party to make payments for the support of a spouse as required by law;
- (8) Provide for possession of personal property of the parties;
- (9) Order a party to refrain from harassing or interfering with the other; ~~and~~
- (10) Award costs and attorney's fees to either ~~party, party;~~
- (11) Prohibit a party from purchasing a firearm for a time fixed in the order;
- (12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is available within a reasonable distance of that

party's residence and is approved by the Department of Administration; and

- (13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

(b) Protective orders entered or consent orders approved pursuant to this Chapter shall be for a fixed period of time not to exceed one year.

(c) A copy of any order entered and filed under this Article shall be issued to each party. In addition, a copy of the order shall be issued to and retained by the police department of the city of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be issued to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides.

(d) The sheriff of the county where a domestic violence order is entered shall provide for immediate entry of the order onto the Division of Criminal Information Network and shall provide for access of such orders to magistrates on a 24-hour-a-day basis. Modifications of the order shall also be entered."

Sec. 2. Article 35 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-269.8. Purchase of firearms by person subject to domestic violence order prohibited.

(a) It is unlawful for any person to purchase or attempt to purchase any gun, rifle, pistol, or other firearm while there remains in force and effect a domestic violence order issued pursuant to Chapter 50B of the General Statutes, prohibiting the person from purchasing a firearm.

(b) Any person violating the provisions of this section shall be guilty of a Class H felony."

Sec. 3. G.S. 15A-534.1 reads as rewritten:

"§ 15A-534.1. Crimes of domestic violence; bail and pretrial release.

(a) In all cases in which the defendant is charged with assault on or communicating a threat to a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes, the judicial official who determines the conditions of pretrial release shall be a judge, and the following provisions shall apply in addition to the provisions of G.S. 15A-534:

- (1) Upon a determination by the ~~judicial official~~ judge that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim and upon a determination that the execution of an appearance bond as required by G.S. 15A-534 will not reasonably assure that such injury or intimidation will not occur, a ~~judicial official~~ judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.
- (2) A ~~judicial official~~ judge may impose the following conditions on pretrial release:

- a. That the defendant stay away from the home, school, business or place of employment of the alleged victim;
- b. That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim;
- c. That the defendant refrain from removing, damaging or injuring specifically identified property;
- d. That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.

The conditions set forth above may be imposed in addition to requiring that the defendant execute a secured appearance bond.

- (3) Should the defendant be mentally ill and dangerous to himself or others or a substance abuser and dangerous to himself or others, the provisions of Article 5 of Chapter 122C of the General Statutes shall apply.

(b) A defendant may be retained in custody not more than 48 hours from the time of arrest without a determination being made under this section by a judge. If a judge has not acted pursuant to this section within 48 hours of arrest, the magistrate shall act under the provisions of this section."

**Sec. 4.** The provisions of G.S. 50B-3(a)(12) as established in this act become effective October 1, 1996. The provisions of G.S. 50B-3(d) as established in this act become effective April 1, 1996. Sections 3 and 4 of this act are effective upon ratification. The remainder of this act becomes effective October 1, 1995, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 783

**CHAPTER 528**

**AN ACT TO PROVIDE FOR THE FORFEITURE OF PROPERTY OWNED BY PERSONS PARTICIPATING IN NUISANCES ON THE PROPERTY INVOLVING THE SALE OR USE OF NARCOTIC DRUGS.**

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 19-2.1 reads as rewritten:

"§ 19-2.1. *Action for abatement; injunction.*

Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the Attorney General, district attorney, county, municipality, or any private citizen of the county may maintain a civil action in the name of the State of North Carolina to abate a nuisance under this Chapter, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a nuisance under this Chapter; provided, however, that no private citizen may maintain such action where the alleged nuisance involves the illegal possession or sale of obscene or lewd matter.

If an action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a restraining order or a temporary



injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than one thousand dollars (\$1,000), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the temporary restraining order or preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting ~~attorney or attorney~~, the Attorney General, county, or municipality, and no action shall be maintained against the public official or public entity for ~~his~~ the official action."

Sec. 2. Article 1 of Chapter 19 of the General Statutes is amended by adding a new section to read:

"§ 19-6.1. Forfeiture of real property.

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the illegal possession or sale of narcotic drugs as defined in G.S. 90-87(17), the real property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

- (1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) had written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;
- (2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that



the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of narcotic drugs and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the sale and additional monies, if necessary. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners."

**Sec. 3.** This act becomes effective December 1, 1995, and applies to nuisances existing on or after that date.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 52

## CHAPTER 529

AN ACT TO AMEND THE PROVISIONS OF CHAPTER 146  
CONCERNING STATE-OWNED SUBMERGED LANDS.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 146-1 reads as rewritten:

*"§ 146-1. Intent of Subchapter.*

(a) It is the purpose and intent of this Subchapter to vest in the Department of Administration, subject to rules and regulations adopted by the Governor and approved by the Council of State as hereinafter provided, responsibility for the management, control and disposition of all vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands, title to which is vested in the State or in any State agency, to be exercised subject to the provisions of this Subchapter.

(b) Further, it is the intent of this Subchapter to establish within the Department, a method for obtaining easements for State-owned lands covered by navigable waters that includes compensation, recognizes the common law rights of riparian or littoral property owners, and balances those rights with the State's obligation to protect public trust rights for all of its citizens. The North Carolina General Assembly finds that the State is unable to provide the necessary access for its citizens to exercise public trust rights and, therefore, recognizes the role that publicly and privately owned piers, docks, wharves, marinas, and other structures located in or over State-owned lands covered by navigable waters generally serve in furthering public trust purposes including:

- (1) Providing citizens with access and ability to exercise public trust boating, fishing, and swimming activities;
- (2) Enhancing the value of appurtenant upland property values with the resulting increased collection of ad valorem taxes;
- (3) Enhancing tourism which is essential to the economy of the State and, in particular, to the coastal counties; and
- (4) Increasing local participation in boating and fishing activities with the resulting increase in taxes paid for fuel, fishing tackle, boat equipment, and imported boats and motors which taxes contribute to the sound economy of the State, and some of which are paid into the federal Wallop-Breaux Fund for redistribution to the State for water resource enhancements and water access improvements.

(c) Nothing in this Subchapter shall apply to a privately owned lake or any hydroelectric reservoir licensed by the Federal Energy Regulatory Commission.

(d) Nothing in this Subchapter shall be construed to limit or expand the full exercise of common law riparian or littoral rights."

**Sec. 2.** G.S. 146-12 reads as rewritten:

*"§ 146-12. Easements in lands covered by water.*

(a) The Department of Administration may grant, to adjoining riparian or littoral owners, easements in lands covered by navigable waters or by the waters of any lake owned by the State for such purposes and upon such conditions as it may deem proper, with the approval of the Governor and Council of State. The Department may, with the approval of the Governor and Council of State, revoke any such easement upon the violation by the grantee or his assigns of the conditions upon which it was granted.

Every such easement shall include only the front of the tract owned by the riparian or littoral owner to whom the easement is granted, shall extend no

further than the deep water, and shall in no respect obstruct or impair navigation.

When any such easement is granted in front of the lands of any incorporated town, the governing body of the town shall regulate the line on deep water to which wharves may be built.

(b) Easements Not Requiring Approval by the Governor or Council of State. -- In accordance with the provisions in subsections (c) through (m) of this section, the Department of Administration shall grant easements to adjoining riparian or littoral owners in State-owned lands covered by navigable waters without the approval of the Governor and the Council of State for:

- (1) Existing structures permitted under Article 7 of Chapter 113A or structures existing prior to the effective date of the permitting requirements of Article 7 of Chapter 113A of the General Statutes.
- (2) New structures permitted under Article 7 of Chapter 113A of the General Statutes after the effective date of this section.

(c) Voluntary Easement Applications for Existing Structures. -- Riparian or littoral property owners of existing structures may voluntarily obtain an easement under subsection (b) of this section in accordance with the procedures set forth in this section. For purposes of this section, the term 'existing structures' means all presently existing piers, docks, marinas, wharves, and other structures located over or upon State-owned lands covered by navigable waters. Applications for voluntary easements shall be received by the State Property Office within 36 months of the effective date of this section.

(d) Notification of Availability of Voluntary Easements. -- The State Property Office shall provide public notice of the availability of voluntary easements by placing an advertisement in one newspaper of general circulation in each of the coastal counties identified under G.S. 113A-103(2) at least once every six months during the 36-month period. The final notice shall be placed at least 30 days prior to the expiration of the 36-month period.

(e) Mandatory Easement Applications for New Structures. -- Riparian or littoral property owners of new structures shall obtain an easement under subsection (b) of this section in accordance with the procedures set forth in this section.

(f) Easement Application. -- An application by a riparian or littoral owner of a new or existing structure for an easement under subsection (b) of this section shall include all of the following and shall:

- (1) Be made in writing to the State Property Office and include the full name and address of the easement applicant.
- (2) Include a plat depicting the footprint and total square footage of all structures located in or over State-owned lands covered by navigable waters. The footprint shall include the total square footage of the area of State-owned lands covered by navigable waters that are enclosed on three or more sides by any structure.
- (3) Include a copy of any 'CAMA' permit required for structures under Article 7 of Chapter 113A of the General Statutes.

- (4) Include a copy of the deed or other instrument through which the applicant establishes ownership of the adjacent riparian or littoral property.
- (5) Specify the use or uses associated with the structure to be covered by the easement.
- (6) Include the appropriate easement purchase payment.
- (g) Easement Terms. -- Any easement granted under subsection (b) of this section shall be in a form suitable for recordation and shall be executed by either the Director or Deputy Director of the State Property Office. The State-owned lands covered by navigable waters included within the easement shall be limited to the footprint of the structure. The terms of each easement shall provide that the easement:
  - (1) Is appurtenant to specifically described, adjacent riparian or littoral property and runs with the land.
  - (2) Specifies that the holder of the easement shall not exclude or prevent the public from exercising public trust rights, including commercial and recreational fishing, shellfishing, seine netting, pound netting, and other fishing rights.
  - (3) Specifies that the holder of the easement obtains no additional rights to interfere with the approval, issuance, or renewal of shellfish or water column leases or to interfere with the use or cultivation of existing shellfish leases, water column leases, or shellfish franchises.
  - (4) Specifies that any rights conveyed to the holder of the easement are not inconsistent with the rights conferred by previous conveyances made by the State for the same property.
  - (5) Is valid for a term of 50 years from the date of issuance.
  - (6) Is eligible for one renewal term of 50 years.
  - (7) Is granted in the public interest for good and valuable consideration received by the State.
  - (8) Specifies by metes and bounds description or attached plat the footprint of the structure for which the easement is issued.
  - (9) Describes the uses of the structure for which the easement is being granted, which may include:
    - a. Providing reasonable access for all vessels traditionally used in the main watercourse area to deep water or, where present, to a specified navigational channel;
    - b. Mooring vessels at or adjacent to the structure;
    - c. Enhancing or improving the value of the adjacent riparian or littoral property; and
    - d. All other reasonable, nonexclusive public trust uses as specified in the easement application, to the extent not otherwise limited by provisions of this Subchapter or any other law.
  - (10) Specifies that rights granted include the right to repair, rebuild, or restore existing structures consistent with Article 7 of Chapter 113A of the General Statutes.
  - (11) Specifies that the exercise of any rights under the easement shall be contingent upon obtaining all required permits.



(h) Easement Purchase Payment. -- The easement purchase payment for easements issued under subsection (b) of this section shall be computed on the basis of one thousand dollars (\$1,000) per acre of footprint coverage prorated in increments of two hundred fifty dollars (\$250.00) rounded up to the nearest quarter acre. The minimum payment shall be five hundred dollars (\$500.00) if any payment is owed after the riparian credit is applied. In recognition of common law riparian and littoral rights and a declared public policy concern that easements provided under this section be available to all citizens, a credit shall be given against any easement purchase payment in an amount equal to the number of linear feet of shoreline multiplied by a factor of 54 feet. No linear feet of shoreline may be used in computing the credit if that area of shoreline has been the basis of a previous credit. For purposes of determining the linear feet of shoreline owned, an application submitted by a corporation or other entity whose members include riparian or littoral lot owners, which owners have the right to use the structure for which the easement is sought, and whose lots are restricted from construction thereon of other structures for similar use, shall be considered an application whose easement purchase payment shall be determined by using the entirety of such use restricted shoreline for purposes of determining the applicable riparian credit. Shoreline utilization shall be considered 'use restricted' if riparian or littoral structures are prohibited by either permit condition or by restrictive covenant or similar, enforceable private restriction.

(i) Easement Issuance. -- Within 75 days of receipt of a completed application under subsection (f) of this section, the Director or Deputy Director of the State Property Office shall issue the requested easement in a form sufficient for recording in the register of deeds of the county or counties in which any part of the structure is located. The act of easement issuance under subsection (b) of this section shall be exempt from the provisions in Chapter 150B of the General Statutes. Failure to issue the requested easement within 75 days of receipt of a completed application and any applicable easement purchase payments shall be treated as issuance of the requested easement and shall entitle the applicant to execution and issuance of the easement.

(j) Easement Renewal. -- Upon written request from the current easement holder, easements shall be renewed for one additional term of 50 years. Renewal easements shall be subject to the terms, conditions, and purchase payments applicable to initial easements at the time of renewal. Written notification of expiring easements shall be provided by the State Property Office at least 180 days prior to expiration of the initial easement term. Letter applications for renewal easements shall be submitted within 180 days of the notice of expiration by the State Property Office.

(k) Easement Modification. -- Any expansion of the footprint of an existing structure shall require an easement or modification of any existing easement. The application for a modification of an easement shall be as provided in subsection (f) of this section. The easement purchase payment shall be based only on the footprint of the expansion after applying the riparian credit. The minimum easement purchase payment shall be five hundred dollars (\$500.00) if any payment is owed after the riparian credit is



applied. Easement holders may voluntarily apply for modification of an easement to correct any material errors or omissions. No easement purchase payment shall be required for the modification of an existing use that does not expand the footprint of the existing structure. No refunds shall be provided for any modification that reduces the footprint.

(l) Easement Transfers. -- An easement granted under subsection (b) of this section shall be transferred to a subsequent owner of the adjacent riparian or littoral property upon written notification to the State Property Office. The notification shall be given within 12 months of the transfer of title to the adjacent riparian or littoral property and shall be accompanied by the instrument of transfer and an easement purchase payment as follows:

(1) During the first 25 years of the easement term, the easement purchase payment shall be the same as the initial payment; and

(2) During the second 25 years of the easement term, the easement purchase payment shall be twice the amount of the initial payment.

(m) Easement Revocation. -- Easements issued under subsection (b) of this section may be revoked in accordance with the provisions of G.S. 146-12(a). Any revocation shall entitle the easement holder to seek administrative review in accordance with the provisions of Article 3 of Chapter 150B of the General Statutes.

(n) Exemptions. -- The following types of structures shall not require an easement under this section:

(1) Piers, docks, or similar structures for the exclusive use of the owner or occupant of the adjacent riparian or littoral property, which generate no revenue directly related to the structure and which accommodate no more than ten vessels;

(2) Structures constructed by any public utility that provide or assist in the provision of utility service;

(3) Structures constructed or owned by the State of North Carolina, or any political subdivision, agency, or department of the State, for the duration that the structures are owned by the entity; or

(4) Structures on submerged lands or lands covered by navigable waters not owned by or for the benefit of the public that have been created by dredging or excavating lands."

Sec. 3. Article 1 of Chapter 146 of the General Statutes is amended by adding a new section to read:

"§ 146-14.1. Natural Resources Easement Fund.

The Natural Resources Easement Fund is established as a nonreverting fund within the Department of Administration. All easement purchase payment monies collected by the Secretary shall be deposited in the Fund. The Fund may be used for direct costs of administering the program. Fifty percent (50%) of the net proceeds in the Fund shall be transferred annually to the Marine Fisheries Commission, and fifty percent (50%) of the net proceeds in the Fund shall be transferred annually to the Wildlife Resources Commission, to be used by both Commissions for the sole purpose of enhancing public trust resources and increasing the public's access to and use of public trust resources, including, but not limited to, meeting the State's cost share obligations for federal Wallop-Breaux Fund projects, enhancing water resources and expanding the number of public boat ramps

and other means of public waters access within the counties designated under G.S. 113A-103(2), and other public trust access purposes."

**Sec. 4.** G.S. 146-64 is amended by adding a new subdivision to read:

"(10) For purposes of this Subchapter, 'deep water' means the depth reasonably necessary to provide and allow reasonable access for all vessels traditionally used in the main watercourse area as of the time of the initial easement application."

**Sec. 5.** This act becomes effective October 1, 1995. Nothing in this act shall require the adoption of rules to implement the provisions herein. The authorization established under this act applies only to the Department of Administration and shall not be used by any other agency to administer or regulate activities affecting the public trust.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 364

## CHAPTER 530

### AN ACT TO AUTHORIZE COLUMBUS COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

*The General Assembly of North Carolina enacts:*

**Section 1.** Occupancy tax. (a) *Authorization and scope.* The Columbus County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) *Collection.* Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for State sales and use tax.

(c) *Administration.* The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm,

corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(d) *Penalties.* A person, firm, corporation, or association who fails or refuses to file the return or pay the tax required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Columbus County Board of Commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(e) *Distribution and use of tax revenue.* Columbus County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Columbus County Tourism Board. The Board shall use the funds remitted to it under this subsection to promote travel and tourism in Columbus County and for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the gross proceeds.
- (2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. -- Expenditures that are designed to increase the use of lodging facilities in a county or to attract tourists or business travelers to the county. The term includes expenditures to construct, maintain, operate, or market a convention or meeting facility, a visitors' center, or a coliseum and other expenditures that, in the judgment of the Authority, will facilitate and promote tourism.

(f) *Effective date of levy.* A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) *Repeal.* A tax levied under this section may be repealed by a resolution adopted by the Columbus County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

**Sec. 2. Tourism Board.** (a) *Appointment.* When the board of commissioners adopts a resolution levying a room occupancy tax under this act, if it has not already created a county Tourism Board under Chapter 706 of the 1993 Session Laws, it shall adopt a resolution creating that Board, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Board including the members' qualifications and terms of office, and for the filling of vacancies on the Board. The board of commissioners may designate one member of the Board as chair and shall determine the compensation, if any, to be paid to members of the Board.

The Board shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Columbus County shall be the ex officio finance officer of the Board.

(b) *Duties.* The Board shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Board shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) *Reports.* The Board shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 458

## CHAPTER 531

### AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE CITY OF GREENVILLE.

*The General Assembly of North Carolina enacts:*

**Section 1.** The corporate limits of the City of Greenville are extended to include the following described property:

*Area 1 - Tar River between Paladin Place and Treybrooke.* The entire width of the Tar River, defined at its width between the mean high water lines of its northern and southern banks, and extending easterly from the primary corporate limits at Paladin Place, as shown on the plat entitled, "Area Annexed by the City of Greenville, NC - A Portion of the Tripp Farm", prepared by Rivers and Associates, Inc., (see Map Book 43, Page 144, Ordinance 94-071) to the primary corporate city limits at Treybrooke, as shown on the plat entitled, "Area Annexed by the City of Greenville, NC - Treybrooke, Lots 4 and 5", prepared by Stroud Engineering Company (see Map Book 37, Page 19, Ordinance 1923).

*Area 2 - Tar River between Treybrooke and Memorial Drive.* The entire width of the Tar River, defined as its width between the mean high water lines of its northern and southern banks, and



extending easterly from the primary corporate limits at Treybrooke, as shown on the plat entitled, "Area Annexed by the City of Greenville, NC - Treybrooke, Section 2, Lot 7", prepared by Stroud Engineering, P.A., (see Map Book 43, Page 137, Ordinance 94-070) to the primary corporate city limits at the western right-of-way of NC Highway 11 and US Highway 13.

*Area 3 - Tar River adjacent to the Charlotte Robertis Heirs property.* The entire width of the Tar River, defined as its width between the mean high water lines of its northern and southern banks, and extending easterly from the primary corporate limits 400 feet east of the eastern right-of-way of Greene Street to the primary corporate city limits at River Park North, as shown on the plat entitled, "Area Annexed by the City of Greenville, NC - January 10, 1980 - Ordinance 929", prepared by the City of Greenville (see Map Book 28, Page 145, Ordinance 929).

*Area 4 - Tar River between River Park North and River Bluff Apartments.* The entire width of the Tar River, defined as its width between the mean high water lines of its northern and southern banks, and extending easterly from the primary corporate limits at the eastern boundary of the River Park North property, as shown on the plat entitled, "Area Annexed by the City of Greenville, NC - January 10, 1980 - Ordinance 929", prepared by the City of Greenville (see Map Book 28, Page 145, Ordinance 929) to the primary corporate city limits at the eastern boundary of the River Bluff Apartments property, as shown on the plat entitled, "Map of Property Annexed July 13, 1972", prepared by the City of Greenville (see Map Book 21, Page 136).

*Area 5 - United Carolina Bank property.*

To Wit: A portion of the United Carolina Bank property described in Deed Book 332, Page 262.

Location: Lying and being outside the corporate limits of the City of Greenville, in Winterville Township, Pitt County, North Carolina, and bounded as follows: on the north by the right-of-way of Red Banks Road; on the east by the area annexed by the City of Greenville on June 30, 1980 by Ordinance 957; on the south and by the area annexed for Wachovia Bank by Ordinance 94-069 (Map Book 43, Page 140).

That portion of the property described in Deed Book 332, at Page 262 that is not currently within the corporate limits of the City of Greenville, NC, said portion of land being about 50 feet wide and about 230 feet long.

*Area 6 - United Carolina Bank property.*

To Wit: A portion of the United Carolina Bank property described in Deed Book 465, Page 229.

Location: Lying and being outside the corporate limits of the City of Greenville, in Winterville Township, Pitt County, North Carolina, and bounded as follows: on the west and north by the area annexed for Wachovia



Bank by Ordinance 94-069 (Map Book 43, Page 140); on the east and south by the area annexed by the City of Greenville on June 30, 1980 by Ordinance 957.

That portion of the property described in Deed Book 465, at Page 229 that is not currently within the corporate limits of the City of Greenville, NC, said portion of land being about 50 feet wide and about 175 feet long.

**Sec. 2.** This act becomes effective June 30, 1995.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 992

**CHAPTER 532**

AN ACT TO PROVIDE THAT SWORN AND CERTIFIED JAILERS AND TELECOMMUNICATORS EMPLOYED BY THE MECKLENBURG COUNTY SHERIFF'S DEPARTMENT ARE ELIGIBLE TO RECEIVE THE BENEFITS AFFORDED TO LAW ENFORCEMENT OFFICERS THROUGH THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

*The General Assembly of North Carolina enacts:*

**Section 1.** For the purposes of benefits afforded on account of membership in the Local Governmental Employees' Retirement System, a "law enforcement officer" as defined in G.S. 128-21(11b) and a "law-enforcement officer" as defined in G.S. 143-166.50(a)(3) shall include an employee of the Mecklenburg Sheriff's Department serving as a sworn and certified jailer or telecommunicator.

**Sec. 2.** This act is effective upon ratification and applies only to persons who were employees of the Mecklenburg County Sheriff's Department enrolled in the North Carolina Local Governmental Employees' Retirement System between July 1, 1994, and the date of ratification of this act.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 710

**CHAPTER 533**

AN ACT TO INCREASE THE NORTH CAROLINA SELF-INSURANCE GUARANTY FUND AND TO ALLOW A CREDIT AGAINST THE GROSS PREMIUMS TAX FOR ASSESSMENTS PAID BY SELF-INSURERS TO THE GUARANTY FUND.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 97-133(a) reads as rewritten:

"(a) The Association shall:

- (1) Obtain from each member self-insurer and file with the Commissioner individual reports specifying the aggregate benefits each member paid during the previous calendar year, and the

annual standard premium that would have been paid by the individual member self-insurer during the previous calendar year, pursuant to manual rates established by the North Carolina Rate Bureau and using the experience rating procedure approved by the Commissioner for that member self-insurer or the annual premium collected by each group member self-insurer during the prior calendar year. These reports shall be due on or before July 15 following the close of that calendar year, except that this deadline may be extended by the Commissioner for up to three additional months for good cause shown.

(2) Assess each member of the Association as follows:

- a. Each individual member self-insurer shall be annually assessed an amount equal to ~~one-half of one percent (0.5%)~~ one-quarter of one percent (0.25%) of the annual standard premium that would have been paid by that member self-insurer for workers' compensation insurance during the prior calendar year; and payment to the Association shall be made no later than September 15 following the close of that calendar year. Where any such assessment is paid based in whole or in part upon estimates of annual standard premium for the prior calendar year, there shall be made in the next year's assessment an adjustment of the assessment of such prior year based on actual audited annual standard premium. Each group member self-insurer shall be annually assessed an amount equal to ~~one-half of one percent (0.5%)~~ one-quarter of one percent (0.25%) of the annual premium collected by the group member self-insurer during the prior calendar year; and payment to the Association shall be made no later than September 15 following the close of that calendar year. Regardless of the size of the Fund, during its first 12 months of membership, no member self-insurer may discount or reduce this ~~one-half of one percent (0.5%)~~ one-quarter of one percent (0.25%) assessment. Assessments paid by members pursuant to this subdivision shall be credited toward the tax paid by self-insurers under G.S. 105-228.5 and G.S. 97-100.
- b. Each member self-insurer shall be notified of the assessment no later than 30 days before it is due.
- c. If a self-insurer is a member of the Association for less than a full calendar year, the annual standard premium shall be adjusted by that portion of the year the self-insurer is not a member of the Association.
- d. If application of the contribution rates referenced in sub-subdivisions a. and b. of this subdivision would produce an amount in excess of the ~~one five~~ one million dollar ~~(\$1,000,000)~~ (\$5,000,000) limits of the fund, an equitable proration may be made; provided that every self-insurer that becomes a member of the Association shall pay an initial assessment, in an amount established by the Board,

regardless of the size of the fund at the time the member joins the Association.

- (3) Administer a fund, to be known as the North Carolina Self-Insurance Guaranty Fund, which shall receive the assessments required in subdivision (2) of this subsection. Once the Fund reaches ~~one~~ five million dollars ~~(\$1,000,000), (\$5,000,000)~~, no further assessments shall be made except initial assessments of new member self-insurers that are required to be made in subdivision (2)d. of this subsection. Assessments may be subsequently made only to maintain the Fund at a level of ~~one~~ five million dollars ~~(\$1,000,000), (\$5,000,000)~~. In its discretion, the Board may determine that the assets of the Fund should be segregated, or, that a separate accounting shall be made, in order to identify that portion of the Fund which represents assessments paid by individual self-insurers and that portion of the Fund which represents assessments paid by group self-insurers. If the Board determines to segregate the Fund in this manner, the Association shall thereafter pay covered claims against individual member self-insurers from that portion of the Fund which represents assessments against individual self-insurers and shall thereafter pay covered claims against group member self-insurers from that portion of the Fund which represents assessments against group self-insurers. The cost of administration incurred by the Association shall be borne by the Fund and the Association is authorized to secure reinsurance and bonds and to otherwise invest the assets of the Fund to effectuate the purpose of the Association, subject to the approval of the Commissioner. All earnings from investment of Fund assets shall be placed in or credited to the Fund.

The Association may purchase primary excess insurance from an insurer licensed by the Commissioner for the appropriate lines of authority to defray its exposure to loss occasioned by the default of one of its members. The terms of any excess insurance so purchased shall be limited to providing coverage of liabilities which exceed the Fund's assets after the payment by member self-insurers of the maximum post-insolvency assessment provided in subdivision (c)(1) of this section herein and the Association shall fund any such purchase by levying a special assessment on its members for this purpose or by application of any unencumbered earnings of the Fund or any other available funds. The Association may obtain from each member any information the Association may reasonably require in order to facilitate the securing of this primary excess insurance. The Association shall establish reasonable safeguards designed to insure that information so received is used only for this purpose and is not otherwise disclosed;

- (4) Be obligated to the extent of covered claims occurring prior to the determination of the member self-insurer's insolvency, or occurring after such determination but prior to the obtaining by

the self-insurer of workers' compensation insurance as otherwise required under this Chapter. The Association shall pay claims against a self-insurer that are not or have not been paid as a result of a determination of insolvency or the institution of bankruptcy or receivership proceedings that occurred prior to the effective date of this Article; provided that any assessments made to pay such claims may be credited towards the tax paid by the self-insurers under G.S. 97-100;

- (5) After paying any claim resulting from a self-insurer's insolvency, be subrogated to the rights of the injured employee and dependents and be entitled to enforce liability against the self-insurer by any appropriate action brought in its own name or in the name of the injured employee and dependents;
- (6) Assess the Fund in an amount necessary to pay only:
  - a. The obligations for the Association under this Article subsequent to an insolvency;
  - b. The expenses of handling covered claims subsequent to an insolvency;
  - c. The cost of examinations under G.S. 97-137; and
  - d. Other expenses authorized by this Article;
- (7) Investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation; and deny all other claims. The Association may review settlements to which the insolvent self-insurer was a party to determine the extent to which such settlements may be properly contested;
- (8) Notify such persons as the Commissioner directs under G.S. 97-136;
- (9) Handle claims through its employees or through one or more self-insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the Commissioner, but designation of a member self-insurer as a servicing facility may be declined by such self-insurer;
- (10) Reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the Association;
- (11) Pay the other expenses of the Association authorized by this section; and
- (12) Establish in the Plan a mechanism to calculate the assessments required by subdivisions (1), (2), and (3) of this subsection by a simple and equitable means to convert from policy or fund years that are different from a calendar year."

**Sec. 2.** This act is effective for taxable years beginning on or after January 1, 1995.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

H.B. 834

## CHAPTER 534

AN ACT (1) TO REQUIRE PUBLIC SCHOOLS TO OFFER AN ABSTINENCE UNTIL MARRIAGE PROGRAM; (2) TO AUTHORIZE LOCAL SCHOOL BOARDS TO OFFER COMPREHENSIVE SEX EDUCATION WHEN CERTAIN REQUIREMENTS CONCERNING REVIEW AND LOCAL APPROVAL ARE SATISFIED; AND (3) TO PROVIDE FOR PARENTAL REVIEW AND APPROVAL OF, AND TO PLACE CERTAIN RESTRICTIONS ON, ANY INSTRUCTION ON SEXUALLY TRANSMITTED DISEASES, OUT-OF-WEDLOCK PREGNANCY, ABSTINENCE UNTIL MARRIAGE, AND COMPREHENSIVE SEX EDUCATION, WHETHER DEVELOPED BY THE STATE OR A LOCAL BOARD OF EDUCATION.

Whereas, parents have the primary responsibility for providing for the health and well-being of their children and the State should not abridge this responsibility; and

Whereas, parents have the primary responsibility for instilling values, ethics, and character in their children, and the State should not abridge this responsibility; and

Whereas, parents have the primary responsibility for educating their children in all areas, including the area of sexuality, and the State should not abridge this responsibility; Now, therefore,

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 115C-81(a2) is repealed.

Sec. 2. G.S. 115C-81(e) is repealed.

Sec. 3. Section 81 of Chapter 115C of the General Statutes is amended by adding a new subsection to read:

"(e1) School Health Education Program to Be Developed and Administered.

(1) A comprehensive school health education program shall be developed and taught to pupils of the public schools of this State from kindergarten through ninth grade. This program includes age-appropriate instruction in the following subject areas, regardless of whether this instruction is described as, or incorporated into a description of, 'family life education', 'family health education', 'health education', 'family living', 'health', 'healthful living curriculum', or 'self-esteem':

- a. Mental and emotional health;
- b. Drug and alcohol abuse prevention;
- c. Nutrition;
- d. Dental health;
- e. Environmental health;
- f. Family living;
- g. Consumer health;
- h. Disease control;
- i. Growth and development;
- j. First aid and emergency care;



k. Preventing sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS) virus infection, and other communicable diseases;

l. Abstinence until marriage education; and

m. Bicycle safety.

(2) The State Board of Education shall supervise the development and operation of a statewide comprehensive school health education program including curriculum development, in-service training provision and promotion of collegiate training, learning material review, and assessment and evaluation of local programs in the same manner as for other programs. The State Board of Education shall adopt objectives for the instruction of the subject areas listed in subdivision (1) of this subsection that are appropriate for each grade level. In addition, the State Board shall approve textbooks and other materials incorporating these objectives that local school administrative units may purchase with State funds. The State Board of Education, through the Department of Public Instruction, shall, on a regular basis, review materials related to these objectives, and distribute these reviews to local school administrative units for their information.

(3) The State Board of Education shall develop objectives for instruction in the prevention of sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS) virus infection, that includes emphasis on the importance of parental involvement, abstinence from sex until marriage, and avoiding intravenous drug use. Any program developed under this subdivision shall present techniques and strategies to deal with peer pressure and to offer positive reinforcement and shall teach reasons, skills, and strategies for remaining or becoming abstinent from sexual activity; for appropriate grade levels and classes, shall teach that abstinence from sexual activity until marriage is the only certain means of avoiding out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health and emotional problems, and that a mutually faithful monogamous heterosexual relationship in the context of marriage is the best lifelong means of avoiding diseases transmitted by sexual contact, including Acquired Immune Deficiency Syndrome (AIDS); and shall teach the positive benefits of abstinence until marriage and the risks of premarital sexual activity. Any instruction concerning the causes of sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS), in cases where homosexual acts are a significant means of transmission, shall include the current legal status of those acts.

(4) The State Board of Education shall evaluate abstinence until marriage curricula and their learning materials and shall develop and maintain a recommended list of one or more approved abstinence until marriage curricula. The State Board may develop an abstinence until marriage program to include on the recommended list. The State Board of Education shall not select

or develop a program for inclusion on the recommended list that does not include the positive benefits of abstinence until marriage and the risks of premarital sexual activity as the primary focus. The State Board shall include on the recommended list only programs that include, in appropriate grades and classes, instruction that:

- a. Teaches that abstinence from sexual activity outside of marriage is the expected standard for all school-age children;
- b. Presents techniques and strategies to deal with peer pressure and offering positive reinforcement;
- c. Presents reasons, skills, and strategies for remaining or becoming abstinent from sexual activity;
- d. Teaches that abstinence from sexual activity is the only certain means of avoiding out-of-wedlock pregnancy, sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS), and other associated health and emotional problems;
- e. Teaches that a mutually faithful monogamous heterosexual relationship in the context of marriage is the best lifelong means of avoiding sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS);
- f. Teaches the positive benefits of abstinence until marriage and the risks of premarital sexual activity;
- g. Provides opportunities that allow for interaction between the parent or legal guardian and the student; and
- h. Provides factually accurate biological or pathological information that is related to the human reproductive system.

(5) The State Board of Education shall make available to all local school administrative units for review by the parents and legal guardians of students enrolled at that unit any State-developed objectives for instruction, any approved textbooks, the list of reviewed materials, and any other State-developed or approved materials that pertain to or are intended to impart information or promote discussion or understanding in regard to the prevention of sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS), to the avoidance of out-of-wedlock pregnancy, or to the abstinence until marriage curriculum. The review period shall extend for at least 60 days before use.

(6) Each local school administrative unit shall provide a comprehensive school health education program that meets all the requirements of this subsection and all the objectives established by the State Board. Each local board of education may expand on the subject areas to be included in the program and on the instructional objectives to be met. This expanded program may include a comprehensive sex education program for that local school administrative unit only if all of the following requirements are satisfied:

- a. Before a comprehensive sex education program is adopted, the local board of education shall conduct a public hearing, after adequately notifying the public of the hearing.
  - b. For at least 30 days before this public hearing and during this public hearing, the objectives for this proposed program and all instructional materials shall be made available for review.
  - c. For at least 30 days after the public hearing, the objectives for the program and all instructional materials shall remain available for review by parents and legal guardians of students in that local school administrative unit.
- (7) Each school year, before students may participate in any portion of (i) a program that pertains to or is intended to impart information or promote discussion or understanding in regard to the prevention of sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS), or to the avoidance of out-of-wedlock pregnancy, (ii) an abstinence until marriage program, or (iii) a comprehensive sex education program, whether developed by the State or by the local board of education, the parents and legal guardians of those students shall be given an opportunity to review the objectives and materials. Local boards of education shall adopt policies to provide opportunities either for parents and legal guardians to consent or for parents and legal guardians to withhold their consent to the students' participation in any or all of these programs.
- (8) Students may receive information about where to obtain contraceptives and abortion referral services only in accordance with a local board's policy regarding parental consent. Any instruction concerning the use of contraceptives or prophylactics shall provide accurate statistical information on their effectiveness and failure rates for preventing pregnancy and sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS), in actual use among adolescent populations and shall explain clearly the difference between risk reduction and risk elimination through abstinence.
- (9) Contraceptives, including condoms and other devices, shall not be made available or distributed on school property.
- (10) School health coordinators may be employed to assist in the instruction of any portion of the comprehensive school health education program. Where feasible, a school health coordinator should serve more than one local school administrative unit. Each person initially employed as a State-funded school health coordinator after June 30, 1987, shall have a degree in health education."

Sec. 4. This act is effective upon ratification. Local boards of education are authorized to implement this act as soon as feasible and are required to do so by the beginning of the 1996-97 school year.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 502

## CHAPTER 535

AN ACT TO ESTABLISH THE LICENSING AND REGISTRATION OF ASSISTED LIVING FACILITIES AND TO REPLACE THE ARCHAIC TERM "DOMICILIARY" CARE WITH THE TERM "ADULT" CARE.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 14-32.2(c) reads as rewritten:

"(c) 'Health Care Facility' shall include hospitals, skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, psychiatric facilities, rehabilitation facilities, kidney disease treatment centers, home health agencies, ambulatory surgical facilities, and any other health care related facility whether publicly or privately owned.

'Residential Care Facility' shall include ~~homes for the aged and disabled, family care homes, group homes for developmentally disabled adults, adult foster care homes, adult care homes~~ and any other residential care related facility whether publicly or privately owned."

**Sec. 2.** G.S. 28A-25-6(f) reads as rewritten:

"(f) If no administrator has been appointed, the clerk of superior court shall disburse the money received under this section for the following purposes and in the following order:

- (1) To pay the surviving spouse's year's allowance and children's year's allowance assigned in accordance with law;
- (2) Repealed by Session Laws 1981, c. 383, s. 3.
- (3) Repealed by Session Laws 1981, c. 383, s. 3.
- (4) All other claims shall be disbursed according to the order set out in G.S. 28A-19-6.

Notwithstanding the foregoing provisions of this subsection, the clerk shall pay, out of funds provided the deceased pursuant to G.S. 111-18 and Part 3 of Article 2 of Chapter 108A of the General Statutes of North Carolina, any lawful claims for ~~domiciliary care received by~~ provided by an adult care home to the deceased, incurred not more than 90 days prior to his death. After the death of a spouse who died intestate and after the disbursements have been made in accordance with this subsection, the balance in the clerk's hands belonging to the estate of the decedent shall be paid to the surviving spouse, and if there is no surviving spouse, the clerk shall pay it to the heirs in proportion to their respective interests."

**Sec. 3.** G.S. 58-55-35(a) reads as rewritten:

"(a) Whenever long-term care insurance provides coverage for the facilities, services, or physical or mental conditions listed below, unless otherwise defined in the policy and certificate, and approved by the Commissioner, such facilities, services, or conditions are defined as follows:

- (1) 'Adult day care program' shall be defined in accordance with the provisions of G.S. 131D-6(b).
- (2) 'Chore' services include the performance of tasks incidental to activities of daily living that do not require the services of a trained homemaker or other specialist. Such services are provided to enable individuals to remain in their own homes and



may include such services as: assistance in meeting basic care needs such as meal preparation; shopping for food and other necessities; running necessary errands; providing transportation to essential service facilities; care and cleaning of the house, grounds, clothing, and linens.

- (3) 'Combination home' shall be defined in accordance with the terms of G.S. 131E-101(1).
- (4) ~~'Domiciliary home'~~ 'Adult care home' shall be defined in accordance with the terms of G.S. 131D-2(a)(3).
- (5) 'Family care home' shall be defined in accordance with the terms of G.S. 131D-2(a)(5).
- (6) 'Group home for developmentally disabled adults' shall be defined in accordance with the terms of G.S. 131D-2(a)(6).
- ~~(7) 'Home for the aged and disabled' shall be defined in accordance with the terms of G.S. 131D-2(a)(7).~~
- (8) 'Home health services' shall be defined in accordance with the terms of G.S. 131E-136(3).
- (9) 'Homemaker services' means supportive services provided by qualified para-professionals who are trained, equipped, assigned, and supervised by professionals within the agency to help maintain, strengthen, and safeguard the care of the elderly in their own homes. These standards must, at a minimum, meet standards established by the North Carolina Division of Social Services and may include: Providing assistance in management of household budgets; planning nutritious meals; purchasing and preparing foods; housekeeping duties; consumer education; and basic personal and health care.
- (10) 'Hospice' shall be defined in accordance with the terms of G.S. 131E-176(13a).
- (11) 'Intermediate care facility' shall be defined in accordance with the terms of G.S. 131E-176(14b).
- (12) 'Nursing home' shall be defined in accordance with the terms of G.S. 131E-101(6).
- (13) 'Respite care, institutional' means provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual by taking over the tasks of that person for a limited period of time. The insured receives care for the respite period in an institutional setting, such as a nursing home, family care home, rest home, or other appropriate setting.
- (14) 'Respite care, non-institutional' means provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual by taking over the tasks of that person for a limited period of time in the home of the insured or other appropriate community location.
- (15) 'Skilled Nursing Facility' shall be defined in accordance with the terms of G.S. 131E-176(23)."

**Sec. 4.** G.S. 108A-14(a) reads as rewritten:

"(a) The director of social services shall have the following duties and responsibilities:



- (1) To serve as executive officer of the board of social services and act as its secretary;
- (2) To appoint necessary personnel of the county department of social services in accordance with the merit system rules of the State Personnel Commission;
- (3) To administer the programs of public assistance and social services established by this Chapter under pertinent rules and regulations;
- (4) To administer funds provided by the board of commissioners for the care of indigent persons in the county under policies approved by the county board of social services;
- (5) To act as agent of the Social Services Commission and Department of Human Resources in relation to work required by the Social Services Commission and Department of Human Resources in the county;
- (6) To investigate cases for adoption and to supervise adoptive placements;
- (7) To issue employment certificates to children under the regulations of the State Department of Labor;
- (8) To supervise ~~domiciliary homes for aged or disabled persons~~ adult care homes under the rules and regulations of the Social Services Commission;
- (9) To assist and cooperate with the Department of Correction and their representatives;
- (10) To act in conformity with the provisions of Article 7, Chapter 35 of the General Statutes with regard to sterilization of mentally ill and mentally retarded persons;
- (11) To investigate reports of child abuse and neglect and to take appropriate action to protect such children pursuant to the Child Abuse Reporting Law, Article 44 of Chapter 7A;
- (12) To accept children for placement in foster homes and to supervise placements for so long as such children require foster home care;
- (13) To respond by investigation to notification of a proposed adoptive placement pursuant to G.S. 48-3(b) and (c); and
- (14) To receive and evaluate reports of abuse, neglect, or exploitation of disabled adults and to take appropriate action as required by the Protection of the Abused, Neglected, or Exploited Disabled Adults Act, Article 6 of this Chapter, to protect these adults."

**Sec. 5.** G.S. 108A-41(a) reads as rewritten:

"(a) Assistance shall be granted under this Part to all persons in ~~domiciliary facilities~~ adult care homes for care found to be essential in accordance with the rules and regulations adopted by the Social Services Commission and prescribed by G.S. 108A-42(b)."

**Sec. 6.** G.S. 108A-47 reads as rewritten:

"§ 108A-47. *Limitations on payments.*

No payment of assistance under this Part shall be made for the care of any person in ~~a domiciliary facility which~~ an adult care home that is owned or operated in whole or in part by any of the following:

- (1) A member of the Social Services Commission, of any county board of social services, or of any board of county commissioners;
- (2) An official or employee of the Department, unless the official or employee has been appointed temporary manager of the facility pursuant to G.S. 131E-237, or of any county department of social services;
- (3) A spouse of a person designated in subdivisions (1) and (2)."

Sec. 6.1. G.S. 113-271(d)(8) reads as rewritten:

- "(8) ~~Rest Home Adult Care Home~~ Resident Fishing License -- No charge. This license shall be issued only to an individual resident of the State who resides in a domiciliary home an adult care home as defined in G.S. 131D-2(a)(3) or G.S. 131E-101(4). This license is valid for the life of the individual so long as he the individual remains a resident of a domiciliary home, an adult care home."

Sec. 7. G.S. 122C-22(a) reads as rewritten:

"(a) The following are excluded from the provisions of this Article and are not required to obtain licensure under this Article:

- (1) Physicians and psychologists engaged in private office practice;
- (2) General hospitals licensed under Article 5 of Chapter 131E of the General Statutes, that operate special units for the mentally ill, developmentally disabled, or substance abusers;
- (3) State and federally-operated facilities;
- (4) ~~Domiciliary care homes~~ Adult care homes licensed under Chapter 131D of the General Statutes;
- (5) Developmental child day care centers licensed under Article 7 of Chapter 110 of the General Statutes;
- (6) Persons subject to licensure under rules of the Social Services Commission;
- (7) Persons subject to rules and regulations of the Division of Vocational Rehabilitation Services; and
- (8) Facilities that provide occasional respite care for not more than two individuals at a time; provided that the primary purpose of the facility is other than as defined in G.S. 122C-3(14)."

Sec. 8. G.S. 131D-2 reads as rewritten:

"§ 131D-2. ~~Licensing of domiciliary homes~~ adult care homes for the aged and disabled.

(a) The following definitions will apply in the interpretation of this section:

- (1) 'Abuse' means the willful or grossly negligent infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful or grossly negligent deprivation by the administrator or staff of ~~a domiciliary home~~ an adult care home of services which are necessary to maintain mental and physical health.
- (1b) 'Adult care home' is an assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or, for scheduled needs, through formal written

agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated, trained staff. Adult care homes that provide care to two to six unrelated residents are commonly called family care homes. Adult care homes and family care homes are subject to licensure by the Division of Facility Services.

- (1b) 'Amenities' means services such as meals, housekeeping, transportation, and grocery shopping that do not involve hands-on personal care.
- (1c) 'Assisted living residence' means any group housing and services program for two or more unrelated adults, by whatever name it is called, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. The Department may allow nursing service exceptions on a case-by-case basis. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from nursing homes subject to provisions of G.S. 131E-102. Effective October 1, 1995, there are two types of assisted living residences: adult care homes and group homes for developmentally disabled adults. Effective July 1, 1996, there is a third type, multiunit assisted housing with services.
- (1d) 'Compensatory agent' means a spouse, relative, or other caretaker who lives with a resident and provides care to a resident.
- (2) 'Developmentally disabled adult' means a person who has attained the age of 18 years and who has a developmental disability defined as a severe, chronic disability of a person which:
  - a. Is attributed to a mental or physical impairment or combination of mental and physical impairments;
  - b. Is manifested before the person attains age 22;
  - c. Is likely to continue indefinitely;
  - d. Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
  - e. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.
- ~~(3) 'Domiciliary home' means any facility, by whatever name it is called, which provides residential care for aged or disabled~~

~~persons whose principal need is a home which provides the supervision and personal care appropriate to their age or disability. Medical care at a domiciliary home is only occasional or incidental, such as may be given in the home of any individual or family, but medication is administered by designated staff of the home. Personal care given in a domiciliary home includes direct assistance, by designated staff, to residents in personal grooming, bathing, dressing, feeding, shopping, laundering clothes, handling personal finances, arranging transportation, scheduling medical or business appointments, as well as attending to any personal needs residents may be incapable of or unable to attend for themselves. Domiciliary homes are to be distinguished from nursing homes subject to licensure under G.S. 131E-102. The three types of domiciliary homes are homes for the aged and disabled, family care homes and group homes for developmentally disabled adults.~~

- (4) 'Exploitation' means the illegal or improper use of an aged or disabled resident or his resources for another's profit or advantage.
- (5) 'Family care home' means ~~a domiciliary home~~ an adult care home having two to six residents. The structure of a family care home may be no more than two stories high and none of the aged or physically disabled persons being served there may be housed in the upper story without provision for two direct exterior ground-level accesses to the upper story.
- (6) 'Group home for developmentally disabled adults' means ~~a domiciliary home~~ an adult care home which has two to nine developmentally disabled adult residents.
- (7) ~~'Home for the aged and disabled' means a domiciliary home which has seven or more residents.~~
- (7a) Effective July 1, 1996, 'multiunit assisted housing with services' means an assisted living residence in which hands-on personal care services and nursing services which are arranged by housing management are provided by a licensed home care or hospice agency, through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one licensed home care or hospice agency. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents, or their compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided by appropriately trained staff when delegated by a licensed nurse according to the home care agency's established plan of care. Multiunit assisted housing with services programs are required to register with the Division of Facility Services and to provide a disclosure statement. The



disclosure statement is required to be a part of the annual rental contract that includes a description of the following requirements:

- a. Emergency response system;
- b. Charges for services offered;
- c. Limitations of tenancy;
- d. Limitations of services;
- e. Resident responsibilities;
- f. Financial/legal relationship between housing management and home care or hospice agencies;
- g. A listing of all home care or hospice agencies and other community services in the area;
- h. An appeals process; and
- i. Procedures for required initial and annual resident screening and referrals for services.

Continuing care retirement communities, subject to regulation by the Department of Insurance under Chapter 58 of the General Statutes, are exempt from the regulatory requirements for multiunit assisted housing with services programs.

- (8) 'Neglect' means the failure to provide the services necessary to maintain a resident's physical or mental health.
- (9) 'Personal care services' means any hands-on services allowed to be performed by In-Home Aides II or III as outlined in Department rules.
- (10) 'Registration' means the submission by a multiunit assisted housing with services provider of a disclosure statement containing all the information as outlined in subdivision (7a) of this subsection.
- (11) 'Resident' means a person living in an assisted living residence for the purpose of obtaining access to housing and services provided or made available by housing management.

(a1) Persons not to be cared for in adult care homes. Except when a physician certifies that appropriate care can be provided on a temporary basis to meet the resident's needs and prevent unnecessary relocation, adult care homes shall not care for individuals with any of the following conditions or care needs:

- (1) Ventilator dependency;
- (2) Individuals requiring continuous licensed nursing care;
- (3) Individuals whose physician certifies that placement is no longer appropriate;
- (4) Individuals whose health needs cannot be met in the specific adult care home as determined by the residence, and
- (5) Such other medical and functional care needs as the Social Services Commission determines cannot be properly met in an adult care home.

(a2) Persons not to be cared for in multiunit assisted housing with services. Except when a physician certifies that appropriate care can be provided on a temporary basis to meet the resident's needs and prevent unnecessary relocation, multiunit assisted housing with services shall not care for individuals with any of the following conditions or care needs:



- (1) Ventilator dependency;
  - (2) Dermal ulcers III and IV, except those stage III ulcers which are determined by an independent physician to be healing;
  - (3) Intravenous therapy or injections directly into the vein, except for intermittent intravenous therapy managed by a home care or hospice agency licensed in this State;
  - (4) Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold;
  - (5) Psychotropic medications without appropriate diagnosis and treatment plans;
  - (6) Nasogastric tubes;
  - (7) Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube, or as managed by a home care or hospice agency licensed in this State;
  - (8) Individuals requiring continuous licensed nursing care;
  - (9) Individuals whose physician certifies that placement is no longer appropriate;
  - (10) Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by a uniform assessment instrument and who meet Medicaid nursing facility level-of-care criteria as defined in the State Plan for Medical Assistance. Maximum physical assistance means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on a uniform assessment instrument;
  - (11) Individuals whose health needs cannot be met in the specific multiunit assisted housing with services as determined by the residence; and
  - (12) Such other medical and functional care needs as the Social Services Commission determines cannot be properly met in multiunit assisted housing with services.
- (a3) Hospice care. At the request of the resident, hospice care may be provided in an assisted living residence under the same requirements for hospice programs as described in Article 10 of Chapter 131E of the General Statutes.

(b) Licensure; inspections. --

- (1) The Department of Human Resources shall inspect and license, under rules adopted by the Social Services Commission, all ~~domiciliary homes~~ adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (d) (c) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary of Human Resources for failure to comply with any part of this section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application.

A license shall not be renewed if outstanding fines and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable information that the Department may by rule require. The Department may also issue a provisional license to a facility, pursuant to rules adopted by the Social Services Commission, for substantial failure to comply with the provisions of this section or rules promulgated pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license.

- (1a) In addition to the licensing and inspection requirements mandated by subdivision (1) of this subsection, the Department shall ensure that ~~domiciliary care facilities~~ adult care homes required to be licensed by this Article are monitored for licensure compliance on a regular basis. In carrying out this requirement, the Department shall work with county departments of social services to do the routine monitoring and to have the Division of Facility Services oversee this monitoring and perform any follow-up inspection called for.
- (2) Any individual or corporation that establishes, conducts, manages, or operates a facility subject to licensure under this section without a license is guilty of a Class 3 misdemeanor, and upon conviction shall be punishable only by a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.
- (3) In addition, the Department may summarily suspend a license pursuant to G.S. 150B-3(c) whenever it finds substantial evidence of abuse, neglect, exploitation or any condition which presents an imminent danger to the health and safety of any resident of the home. Any facility wishing to contest summary suspension of a license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 20 days after the Department mails a notice of summary suspension to the licensee.
- (4) Notwithstanding G.S. 8-53 or any other law relating to confidentiality of communications between physician and patient, in the course of an inspection conducted under subsection (b):
  - a. Department representatives may review any writing or other record concerning the admission, discharge, medication, care, medical condition, or history of any person who is or has been a resident of the facility being inspected, and

- b. Any person involved in giving care or treatment at or through the facility may disclose information to Department representatives;

unless the resident objects in writing to review of his records or disclosure of such information.

The facility, its employees and any other person interviewed in the course of an inspection shall be immune from liability for damages resulting from disclosure of any information to the Department.

The Department shall not disclose:

- a. Any confidential or privileged information obtained under this subsection unless the resident or his legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders disclosure, or
- b. The name of anyone who has furnished information concerning a facility without that person's consent.

The Department shall institute appropriate policies and procedures to ensure that unauthorized disclosure does not occur. All confidential or privileged information obtained under this section and the names of persons providing such information shall be exempt from Chapter 132 of the General Statutes.

~~(c) The following facilities are exempt from this section and shall not be required to obtain a license hereunder:~~

- ~~(1) Those which care for one person only;~~
- ~~(2) Those which care for two or more persons, all of whom are related or connected by blood or by marriage to the operator of the facility;~~
- ~~(3) Those which make no charges for care, either directly or indirectly;~~
- ~~(4) Those which care for no more than four persons, all of whom are under the supervision of the United States Veterans Administration.~~

The following are excluded from the provisions of this section and are not required to be registered or obtain licensure under this section:

- (1) Facilities licensed under Chapter 122C or Chapter 131E of the General Statutes;
- (2) Persons subject to rules of the Division of Vocational Rehabilitation Services;
- (3) Facilities that care for no more than four persons, all of whom are under the supervision of the United States Veterans Administration; and
- (4) Facilities that make no charges for housing, amenities, or personal care service, either directly or indirectly.

(c1) Although the contract obligation still remains to pay the housing management for any services covered by the contract between the resident and housing management, the resident of an assisted living facility has the right to obtain services not at the expense of the housing management, from providers other than the housing management.

(c2) The Social Services Commission shall adopt any rules necessary to carry out this section. The Commission has the authority, in adopting rules, to specify the limitation of nursing services provided by assisted living residences. In developing rules, the Commission shall consider the need to ensure comparable quality of services provided to residents, whether these services are provided directly by a licensed assisted living provider, licensed home care agency, or hospice. In adult care homes, living arrangements where residents require supervision due to cognitive impairments, rules shall be promulgated to ensure that supervision is appropriate and adequate to meet the special needs of these residents.

(c3) Nothing in this section shall be construed to supersede any federal or State antitrust, antikickback, or safe harbor laws or regulations.

(c4) Housing programs for two or more unrelated adults that target their services to elderly or disabled persons in which the only services provided by the housing management, either directly or through an agreement or other arrangements, are amenities that include, at a minimum, one meal a day and housekeeping services, are exempt from licensure, but are required to be listed with the Division of Aging, providing information on their location and number of units operated. This type of housing is not considered assisted living.

(d) This section does not apply to any institution which is established, maintained or operated by any unit of government, by any commercial inn or hotel, or to any facility licensed by the Medical Care Commission under the provisions of G.S. 131E-102, entitled 'Licensure requirements.' If any nursing home licensed under G.S. 131E-102 also functions as a domiciliary home, then the domiciliary home component must comply with rules adopted by the Medical Care Commission.

(e) The Department of Human Resources shall provide the method of evaluation of residents in ~~domiciliary homes~~ adult care homes in order to determine when any of those residents are in need of the professional medical and nursing care provided in licensed nursing homes.

(f) If any provisions of this section or the application of it to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(g) In order for ~~a domiciliary home~~ an adult care home to maintain its license, it shall not hinder or interfere with the proper performance of duty of a lawfully appointed community advisory committee, as defined by G.S. 131D-31 and G.S. 131D-32.

(h) Suspension of admissions to ~~domiciliary home;~~ adult care home;

- (1) In addition to the administrative penalties described in subsection (b), the Secretary may suspend the admission of any new residents to ~~a domiciliary home,~~ an adult care home, where the conditions of the ~~domiciliary home~~ adult care home are detrimental to the health or safety of the residents. This suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removing the suspension.



- (2) In imposing a suspension under this subsection, the Secretary shall consider the following factors:
  - a. The degree of sanctions necessary to ensure compliance with this section and rules adopted hereunder; and
  - b. The character and degree of impact of the conditions at the home on the health or safety of its residents.
- (3) The Secretary of Human Resources shall adopt rules to implement this subsection.
- (4) Any facility wishing to contest a suspension of admissions shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 20 days after the Department mails a notice of suspension of admissions to the licensee.

(i) Notwithstanding the existence or pursuit of any other remedy, the Department of Human Resources may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of a ~~domiciliary home~~ an adult care home without a license. Such action shall be instituted in the superior court of the county in which any unlicensed activity has occurred or is occurring.

If any person shall hinder the proper performance of duty of the Secretary or his representative in carrying out this section, the Secretary may institute an action in the superior court of the county in which the hindrance has occurred for injunctive relief against the continued hindrance, irrespective of all other remedies at law.

Actions under this subsection shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure."

**Sec. 9.** G.S. 131D-4.1 as added by Chapter 449 of the 1995 Session Laws reads as rewritten:

"§ 131D-4.1. ~~Domiciliary~~ Adult care homes; legislative intent.

The General Assembly finds and declares that the ability to exercise personal control over one's life is fundamental to human dignity and quality of life and that dependence on others for some assistance with daily life activities should not require surrendering personal control of informed decision making or risk taking in all areas of one's life.

The General Assembly intends to ensure that ~~domiciliary~~ adult care homes provide services that assist the residents in such a way as to assure quality of life and maximum flexibility in meeting individual needs and preserving individual autonomy."

**Sec. 10.** G.S. 131D-4.2 as enacted by Chapter 449 of the 1995 Session Laws reads as rewritten:

"§ 131D-4.2. ~~Domiciliary~~ Adult care homes; family care homes; annual cost reports; exemptions; enforcement.

(a) Except for family care homes, ~~domiciliary~~ adult care homes with a licensed capacity of seven to twenty beds, which are licensed pursuant to this Chapter, to Chapter 122C of the General Statutes, and to Chapter 131E of the General Statutes, shall submit audited reports of actual costs to the



Department at least every two years in accordance with rules adopted by the Department under G.S. 143B-10. For years in which an audited report of actual costs is not required, an annual cost report shall be submitted to the Department in accordance with rules adopted by the Department under G.S. 143B-10.

(b) Except for family care homes, domiciliary adult care homes with a licensed capacity of twenty-one beds or more, which are licensed pursuant to this Chapter, to Chapter 122C of the General Statutes, and to Chapter 131E of the General Statutes, shall submit annual audited reports of actual costs to the Department of Human Resources, in accordance with rules adopted by the Department under G.S. 143B-10.

(c) Family care homes shall submit annual cost reports to the Department of Human Resources, in accordance with rules adopted by the Department under G.S. 143B-10.

(d) Facilities that do not receive State/County Special Assistance or Medicaid personal care are exempt from the reporting requirements of this section.

(e) The first audited cost report shall be for the period from January 1, 1995, through September 30, 1995, and shall be due March 1, 1996. Thereafter, the annual reporting period shall be October 1 through September 30, with the annual report due by the following March 1.

(f) The Department shall have the authority to conduct audits and review audits submitted pursuant to subsections (a), (b), and (c) above.

(g) The Department may take either or both of the following actions to enforce compliance by a facility with this section, or to punish noncompliance:

- (1) Seek a court order to enforce compliance;
- (2) Suspend or revoke the facility's license, subject to the provisions of Chapter 150B of the General Statutes.

(h) The report documentation shall be used to adjust the domiciliary adult care home rate annually, an adjustment that is in addition to the annual standard adjustment for inflation as determined by the Office of State Budget and Management. The Department of Human Resources shall adopt rules for the rate-setting methodology and audited cost reports in accordance with G.S. 143B-10."

**Sec. 10.1.** G.S. 131D-4.3 as enacted by Chapter 449 of the 1995 Session Laws reads as rewritten:

"§ 131D-4.3. Domiciliary Adult care home rules.

(a) Pursuant to G.S. 143B-153, the Social Services Commission shall adopt rules to ensure at a minimum, but shall not be limited to, the provision of the following by domiciliary adult care homes:

- (1) Client assessment and independent case management;
- (2) A minimum of 75 hours of training for personal care aides performing heavy care tasks and a minimum of 40 hours of training for all personal care aides. The training for aides providing heavy care tasks shall be comparable to State-approved Certified Nurse Aide I training. For those aides meeting the 40-hour requirement, at least 20 hours shall be classroom training to include at a minimum:

- a. Basic nursing skills;
- b. Personal care skills;
- c. Cognitive, behavioral, and social care;
- d. Basic restorative services; and
- e. Residents' rights.

A minimum of 20 hours of training shall be provided for aides in family care homes that do not have heavy care residents. Persons who either pass a competency examination developed by the Department of Human Resources, have been employed as personal care aides for a period of time as established by the Department, or meet minimum requirements of a combination of training, testing, and experience as established by the Department shall be exempt from the training requirements of this subdivision;

- (3) Monitoring and supervision of residents; and

- (4) Oversight and quality of care as stated in G.S. 131D-4.1.

(b) Rules to implement this section shall be adopted as emergency rules in accordance with Chapter 150B of the General Statutes. These rules shall be in effect no later than January 1, 1996.

(c) The Department may suspend or revoke a facility's license, subject to the provisions of Chapter 150B, to enforce compliance by a facility with this section or to punish noncompliance."

**Sec. 11.** The title of Article 3 of Chapter 131D of the General Statutes reads as rewritten:

#### "ARTICLE 3.

~~"Domiciliary Home~~ Adult Care Home Residents' Bill of Rights."

**Sec. 12.** G.S. 131D-19 reads as rewritten:

"§ 131D-19. *Legislative intent.*

It is the intent of the General Assembly to promote the interests and well-being of the residents in ~~domiciliary homes to include family care homes, homes for the aged and disabled, and group homes for developmentally disabled adults~~ adult care homes and assisted living residences licensed pursuant to G.S. 131D-2. It is the intent of the General Assembly that every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist the resident in the fullest possible exercise of these rights. It is the intent of the General Assembly that rules developed by the Social Services Commission to implement Article 1 and Article 3 of Chapter 131D of the General Statutes encourage every resident's quality of life, autonomy, privacy, independence, respect, and dignity and provide the following:

- (1) Diverse and innovative housing models that provide choices of different lifestyles that are acceptable, cost-effective, and accessible to all consumers regardless of age, disability, or financial status;
- (2) A residential environment free from abuse, neglect, and exploitation;
- (3) Available, affordable personal service models and individualized plans of care that are mutually agreed upon by the resident, family, and providers and that include measurable goals and outcomes;

- (4) Client assessment, evaluation, and independent case management that enhance quality of life by allowing individual risk-taking and responsibility by the resident for decisions affecting daily living to the greatest degree possible based on the individual's ability; and
- (5) Oversight, monitoring, and supervision by State and county governments to ensure every resident's safety and dignity and to assure that every resident's needs, including nursing and medical care needs if and when needed, are being met."

Sec. 13. G.S. 131D-20 reads as rewritten:

"§ 131D-20. *Definitions.*

As used in this Article, the following terms have the meanings specified:

- (1) 'Abuse' means the willful or grossly negligent infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful or grossly negligent deprivation by the administrator or staff of ~~a domiciliary home~~ an adult care home of services which are necessary to maintain mental and physical health.
- (2) ~~'Domiciliary home' means any facility, by whatever name it is called, which provides residential care for aged or disabled persons whose principal need is a home which provides the supervision and personal care appropriate to their age or disability. Medical care at a domiciliary home is only occasional or incidental, such as may be given in the home of any individual or family, but medication is administered by designated staff of the home. Personal care given in a domiciliary home includes direct assistance, by designated staff, to residents in personal grooming, bathing, dressing, feeding, shopping, laundering clothes, handling personal finances, arranging transportation, scheduling medical or business appointments, as well as attending to any personal needs residents may be incapable of or unable to attend for themselves. Domiciliary homes are to be distinguished from nursing homes subject to licensure under G.S. 131E-102. The three types of domiciliary homes are homes for the aged and disabled, family care homes and group homes for developmentally disabled adults.~~
- (2a) 'Adult care home' is an assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or, for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated, trained staff. Adult care homes that provide care to two to six unrelated residents are commonly called family care homes. Adult care homes and family care homes are subject to licensure by the Division of Facility Services.

- (2b) 'Assisted living residence' means any group housing and services program for two or more unrelated adults, by whatever name it is called, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. The Department may allow nursing service exceptions on a case-by-case basis. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from nursing homes subject to provisions of G.S. 131E-102.
- (3) 'Exploitation' means the illegal or improper use of an aged or disabled resident or his resources for another's profit or advantage.
- (4) 'Facility' means ~~a domiciliary home~~ an adult care home licensed pursuant to G.S. 131D-2.
- (5) 'Family care home' means ~~a domiciliary home~~ an adult care home having two to six residents. The structure of a family care home may be no more than two stories high and none of the aged or physically disabled persons being served there may be housed in the upper story without provision for two direct exterior ground-level accesses to the upper story.
- (6) 'Group home for developmentally disabled adults' means a ~~domiciliary home~~ and adult care home which has two to nine developmentally disabled adult residents.
- (7) ~~'Home for the aged and disabled' means a domiciliary home which has seven or more residents.~~
- (8) 'Neglect' means the failure to provide the services necessary to maintain the physical or mental health of a resident.
- (9) 'Resident' means an aged or disabled person who has been admitted to a facility.'

Sec. 14. G.S. 131D-31 reads as rewritten:

"§ 131D-31. ~~Domiciliary home~~ Adult care home community advisory committees.

(a) Statement of Purpose. -- It is the intention of the General Assembly that community advisory committees work to maintain the intent of the ~~Domiciliary Home Adult Care Home~~ Residents' Bill of Rights within the licensed ~~domiciliary homes~~ adult care homes in this State. It is the further intent of the General Assembly that the committees promote community involvement and cooperation with ~~domiciliary homes~~ adult care homes to ensure quality care for the elderly and disabled adults.

(b) Establishment and Appointment of Committees. --

- (1) A community advisory committee shall be established in each county which that has at least one licensed ~~domiciliary home~~, adult care home shall serve all the homes in the county, and shall work with each of these homes for the best interests of the residents. In a county which that has one, two, or three ~~homes for the aged and disabled~~, adult care homes with 10 or more beds, the committee shall have five members.



- (2) In a county with four or more ~~homes for the aged and disabled,~~ adult care homes with 10 or more beds, the committee shall have one additional member for each ~~home for the aged and disabled~~ adult care home with 10 or more beds in excess of three, up to a maximum of 20 members. In each county with four or more ~~homes for the aged and disabled,~~ adult care homes with 10 or more beds, the committee shall establish a subcommittee of no more than five members and no fewer than three members from the committee for each ~~domiciliary home~~ adult care home in the county. Each member must serve on at least one subcommittee.
- (3) In counties with no ~~homes for the aged and disabled,~~ adult care homes with 10 or more beds, the committee shall have five members. Regardless of how many members a particular community advisory committee ~~must~~ is required to have, at least one member of each committee shall be a person involved in the area of mental retardation.
- (4) The boards of county commissioners are encouraged to appoint the ~~Domiciliary Home~~ Adult Care Home Community Advisory Committees. Of the members, a minority (not less than one-third, but as close to one-third as possible) ~~must~~ shall be chosen from among persons nominated by a majority of the chief administrators of ~~domiciliary homes~~ adult care homes in the county. If the ~~domiciliary home~~ adult care home administrators fail to make a nomination within 45 days after written notification has been sent to them requesting a nomination, ~~such~~ these appointments may be made without nominations. If the county commissioners fail to appoint members to a committee by July 1, 1983, the appointments shall be made by the Assistant Secretary ~~on~~ for Aging, Department of Human Resources, no sooner than 45 days after nominations have been requested from the ~~domiciliary home~~ adult care home administrators, but no later than October 1, 1983. In making ~~his~~ appointments, the Assistant Secretary for Aging shall follow the same appointment process as that specified for the County Commissioners.
- (c) Joint ~~nursing~~ Nursing and Domiciliary Home Adult Care Home Community Advisory Committees. -- Appointment to the Nursing Home Community Advisory Committees shall preclude appointment to the ~~Domiciliary Home~~ Adult Care Home Community Advisory Committees except where written approval to combine these committees is obtained from the Assistant Secretary ~~on~~ for Aging, Department of Human Resources. Where ~~such~~ this approval is obtained, the Joint Nursing and ~~Domiciliary Home~~ Adult Care Home Community Advisory Committee shall have the membership required of Nursing Home Community Advisory Committees and one additional member for each ~~home for the aged and disabled~~ present adult care home with 10 or more beds licensed in the county. In counties with no ~~homes for the aged and disabled,~~ adult care homes with 10 or more beds, there shall be one additional member for every four ~~domiciliary homes~~ other types of adult care homes in the county. In no case shall the number of members on the Joint Nursing and ~~Domiciliary Home~~ Adult Care Home



Community Advisory Committee exceed 25. Each member shall exercise the statutory rights and responsibilities of both Nursing Home Committees and ~~Domiciliary Home Adult Care Home~~ Committees. In making appointments to this joint committee, the county commissioners shall solicit nominations from both nursing and ~~domiciliary home adult care home~~ administrators for the appointment of approximately (but no more than) one-third of the members.

(d) Terms of Office. -- Each committee member shall serve an initial term of one year. Any person reappointed to a second or subsequent term in the same county shall serve a two- or three-year term at the county commissioners' discretion to ensure staggered terms of office.

(e) Vacancies. -- Any vacancy shall be filled by appointment of a person for a one-year term. If this vacancy is in a position filled by an appointee nominated by the chief administrators of ~~domiciliary homes adult care homes~~ within the county, then the county commissioners shall fill the vacancy from persons nominated by a majority of the chief administrators. If the ~~domiciliary home adult care home~~ administrators fail to make a nomination by registered mail within 45 days after written notification has been sent to them requesting a nomination, such this appointment may be made without nominations. If the county commissioners fail to fill a vacancy, the vacancy may be filled by the Assistant Secretary on for Aging, Department of Human Resources no sooner than 45 days after the commissioners have been notified of the appointment or vacancy.

(f) Officers. -- The committee shall elect from its members a chair, to serve a one-year term.

(g) Minimum Qualifications for Appointment. -- Each member must be a resident of the county which the committee serves. No person or immediate family member of a person with a financial interest in a home served by the committee, or employee or governing board member of a home served by the committee, or immediate family member of a resident in a home served by the committee may be a member of that committee. Any county commissioner who is appointed to the committee shall be deemed to be serving on the committee in an ex officio capacity. Members of the committee shall serve without compensation, but may be reimbursed for actual expenses incurred by them in the performance of their duties. The names of the committee members and the date of expiration of their terms shall be filed with the Division of Aging, Department of Human Resources.

(h) Training. -- The Division of Aging, Department of Human Resources, shall develop training materials, which shall be distributed to each committee member. Each committee member must receive training as specified by the Division of Aging prior to exercising any power under G.S. 131D-32. The Division of Aging, Department of Human Resources, shall provide the committees with information, guidelines, training, and consultation to direct them in the performance of their duties.

(i) Any written communication made by a member of a ~~domiciliary home adult care home~~ advisory committee within the course and scope of the member's duties, as specified in G.S. 131D-32, shall be privileged to the extent provided in this subsection. This privilege shall be a defense in a

cause of action for libel if the member was acting in good faith and the statements and communications do not amount to intentional wrongdoing.

To the extent that any ~~domiciliary home~~ adult care home advisory committee or any member ~~thereof~~ is covered by liability insurance, that committee or member shall be deemed to have waived the qualified immunity herein to the extent of indemnification by insurance."

Sec. 15. G.S. 131D-32 reads as rewritten:

"§ 131D-32. Functions of ~~domiciliary home~~ adult care home community advisory committees.

(a) The committee shall serve as the nucleus for increased community involvement with ~~domiciliary homes~~ adult care homes and their residents.

(b) The committee shall promote community education and awareness of the needs of aging and disabled persons who reside in ~~domiciliary homes~~, adult care homes, and shall work towards keeping the public informed about aspects of long-term care and the operation of ~~domiciliary homes~~ adult care homes in North Carolina.

(c) The committee shall develop and recruit volunteer resources to enhance the quality of life for ~~domiciliary home~~ adult care home residents.

(d) The committee shall establish linkages with the ~~domiciliary home~~ adult care home administrators and the county department of social services for the purpose of maintaining the intent of the Domiciliary Home Adult Care Home Residents' Bill of Rights.

(e) Each committee shall apprise itself of the general conditions under which the persons are residing in the homes, and shall work for the best interests of the persons in the homes. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level. ~~The names of all complaining persons and the names of residents involved in the complaint shall remain confidential unless written permission is given for disclosure.~~ The identity of any complainant or resident involved in a complaint shall not be disclosed except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq. The committee shall notify the enforcement agency of all verified violations of the Domiciliary Home Adult Care Home Residents' Bill of Rights.

(f) The committee or subcommittee may communicate through the committee chair with the Department of Human Resources, the county department of social services, or any other agency in relation to the interest of any resident.

(g) Each committee shall quarterly visit the ~~homes for the aged and disabled~~ adult care homes with 10 or more beds it serves. For each official quarterly visit, a majority of the committee members shall be present. A minimum of three members of the committee shall make at least one visit annually to each ~~family care home and group home for developmentally disabled adults present~~ other type of adult care home licensed in the county. In addition, each committee may visit the ~~domiciliary homes~~ adult care homes it serves whenever it deems it necessary to carry out its duties. In counties with subcommittees, the subcommittee assigned to a home shall perform the duties of the committee under this subsection, and a majority of the subcommittee members must be present for any visit. When visits are

made to group homes for developmentally disabled adults, rules concerning confidentiality as adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall apply.

(h) The individual members of the committee shall have the right between 10:00 a.m. and 8:00 p.m. to enter the facility the committee serves in order to carry out the members' responsibilities. In a county where subcommittees have been established, this right of access shall be limited to members of the subcommittee which serves that home. A majority of the committee or subcommittee members ~~must~~ shall be present to enter the facility at other hours. Before entering any ~~domiciliary home~~, adult care home, the committee or members of the committee shall identify themselves to the person present at the facility who is in charge of the facility at that time.

(i) The committee shall prepare reports as required by the Department of Human Resources containing an appraisal of the problems of ~~domiciliary care adult care homes~~ facilities as well as issues affecting long-term care in general. Copies of the report shall be sent to the board of county commissioners, county department of social services and the Division of Aging.

(j) Nothing contained in this section shall be construed to require the expenditure of any county funds to carry out the provisions ~~herein~~, in this section.

Sec. 16. G.S. 131D-34(h) reads as rewritten:

"(h) The Secretary shall establish a penalty review committee within the Department, which shall review administrative penalties assessed pursuant to this section and pursuant to G.S. 131E-129. The Secretary shall ensure that departmental staff review of local departments of social services' penalty recommendations along with prepared staff recommendations for the penalty review committee are completed within 60 days of receipt by the Department of the local recommendations. The Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility for Type B violations except those violations that have been previously cited against the long-term care facility during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer. The Secretary shall ensure that the ~~Nursing Home/Rest Home~~ Nursing Home/Adult Care Home Penalty Review Committee established by this subsection is comprised of nine members. At least one member shall be appointed from each of the following categories:

- (1) A licensed pharmacist;
- (2) A registered nurse experienced in long-term care;
- (3) A representative of a nursing home;
- (4) A representative of a ~~domiciliary home~~; an adult care home; and
- (5) A public member.

Neither the pharmacist, nurse, nor public member appointed under this subsection nor any member of their immediate families shall be employed by or own any interest in a nursing home or ~~domiciliary home~~, adult care home.

Each member of the Committee shall serve a term of two years. The initial terms of the members shall commence on August 3, 1989. The

Secretary shall fill all vacancies. Unexcused absences from three consecutive meetings constitute resignation from the Committee."

**Sec. 17.** The Title of Article 4 of Chapter 131D of the General Statutes reads as rewritten:

"ARTICLE 4.

"Temporary Management of ~~Domiciliary Homes.~~ Adult Care Homes."

**Sec. 18.** G.S. 131D-35 reads as rewritten:

"§ 131D-35. *Temporary management of* ~~domiciliary homes.~~ adult care homes.

The provisions of Article 13 of Chapter 131E are incorporated by reference in this Article."

**Sec. 19.** G.S. 131E-16(15) reads as rewritten:

"(15) 'Hospital facilities' means any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals; chronic disease, maternity, mental, tuberculosis and other specialized hospitals; nursing homes, including skilled nursing facilities and intermediate care facilities; ~~domiciliary homes~~ adult care homes for the aged and disabled; public health center facilities; housing or quarters for local public health departments; facilities for intensive care and self-care; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; residences and training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administrative buildings, central service and other administrative facilities; communication, computer and other electronic facilities; fire-fighting facilities; pharmaceutical and recreational facilities; storage space; X ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members and physicians; and such other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities."

**Sec. 20.** G.S. 131E-76(3) reads as rewritten:

"(3) 'Hospital' means any facility which has an organized medical staff and which is designed, used, and operated to provide health care, diagnostic and therapeutic services, and continuous nursing care primarily to inpatients where such care and services are rendered under the supervision and direction of physicians licensed under Chapter 90 of the General Statutes, Article 1, to two or more persons over a period in excess of 24 hours. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific health specialties. The term does not include private mental facilities licensed under Article 2



of Chapter 122C of the General Statutes, nursing homes licensed under G.S. 131E-102, and ~~domiciliary homes~~ adult care homes licensed under G.S. 131D-2."

**Sec. 21.** G.S. 131E-101 reads as rewritten:

"§ 131E-101. *Definitions.*

As used in this Part, unless otherwise specified:

- (1) 'Combination home' means a nursing home offering one or more levels of care, including any combination of skilled nursing, intermediate care, and ~~domiciliary home~~ adult care home.
- (2) 'Commission' means the North Carolina Medical Care Commission.
- (3) 'Community advisory committee' means a nursing home advisory committee established for the statutory purpose of working to carry out the intent of the Nursing Home Patients' Bill of Rights (Chapter 131E, Article 6, Part B) in accordance with G.S. 143B-181.1.
- (4) ~~'Domiciliary home,' 'Adult care home,'~~ as distinguished from a nursing home, means a facility operated as a part of a nursing home and which provides residential care for aged or disabled persons whose principal need is a home with the ~~sheltered shelter~~ or personal care their age or disability requires. Medical care in a ~~domiciliary home~~ an adult care home is usually occasional or incidental, such as may be required in the home of any individual or family, but the administration of medication is supervised. Continuing planned medical and nursing care to meet the resident's needs may be provided under the direct supervision of a physician, nurse, or home health agency. ~~Domiciliary homes~~ Adult care homes are to be distinguished from nursing homes subject to licensure under this Part. ~~The three types of domiciliary homes are homes for the aged and disabled, family care homes and group homes for developmentally disabled adults.~~
- (5) 'Medical review committee' means a committee of a State or local professional society, of a medical staff of a licensed hospital, of physicians having privileges within the nursing home or of a peer review corporation or organization which is formed for the purpose of evaluating the quality, cost of or necessity for health care services under applicable federal statutes.
- (6) 'Nursing home' means a facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A 'nursing home' is a home for chronic or convalescent patients, who, on admission, are not as a rule, acutely ill and who do not usually require special facilities such as an operating room, X-ray facilities, laboratory facilities, and obstetrical facilities. A 'nursing home' provides care for persons who have remedial ailments or other ailments, for which medical and nursing care are indicated; who, however, are not sick enough to require general hospital care. Nursing care is



their primary need, but they will require continuing medical supervision.

- (7) 'Peer review committee' means any committee appointed in accordance with G.S. 131E-108, 'Peer review.'"

Sec. 22. G.S. 131E-104(b) reads as rewritten:

"(b) The Commission shall adopt rules for the operation of the ~~domiciliary adult care~~ portion of a combination home that are equal to the rules adopted by the Social Services Commission for the operation of freestanding ~~domiciliary homes, adult care homes~~. The ~~domiciliary adult care~~ portion of a combination home in existence on January 1, 1982, shall be exempt from physical plant minimum standards, unless the Department determines the exemption to be an imminent hazard to health, safety and welfare of the residents."

Sec. 23. G.S. 131E-105(a) reads as rewritten:

"(a) The Department shall inspect any nursing home and any ~~domiciliary home adult care home~~ operated as a part of a nursing home in accordance with rules adopted by the Commission."

Sec. 24. G.S. 131E-106 reads as rewritten:

"§ 131E-106. Evaluation of residents in ~~domiciliary homes, adult care homes~~.  
The Department shall prescribe the method of evaluation of residents in the ~~domiciliary adult care~~ portion of a combination home in order to determine when any of these residents is in need of professional medical and nursing care as provided in licensed nursing homes."

Sec. 25. G.S. 131E-115 reads as rewritten:

"§ 131E-115. Legislative intent.

It is the intent of the General Assembly to promote the interests and well-being of the patients in nursing homes and ~~homes for the aged and disabled adult care homes~~ licensed pursuant to G.S. 131E-102, and patients in a nursing home operated by a hospital which is licensed under Article 5 of G.S. Chapter 131E. It is the intent of the General Assembly that every patient's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist the patient in the fullest possible exercise of these rights."

Sec. 26. G.S. 131E-231(1) reads as rewritten:

"(1) 'Long-term care facility' means a nursing home as defined in G.S. 131E-101(6), ~~a domiciliary home as defined in G.S. 131D-2(a)(3), and a domiciliary home as defined in G.S. 131E-101(4)~~, G.S. 131E-101(6) and an adult care home as defined in G.S. 131D-2(a)(3) or G.S. 131E-101(4)."

Sec. 27. G.S. 131E-242(a) reads as rewritten:

"(a) The Department shall establish a temporary management contingency fund from the proceeds of penalties collected by the Department under the provisions of G.S. 131E-109 and G.S. 131E-129 for nursing facilities, and G.S. 131D-2 and G.S. 131D-34 for ~~domiciliary homes, adult care homes~~."

Sec. 28. G.S. 135-40.6(2)d. reads as rewritten:

"d. Hospitalization for custodial, ~~domiciliary adult care~~ or sanitarium care, or rest cures, is not covered."

Sec. 29. G.S. 135-40.7(2) reads as rewritten:

"(2) Charges for care in a nursing home, ~~home for the aged, adult care home, convalescent home, or in any other facility or location for custodial or domiciliary care or for rest cures.~~"

Sec. 30. G.S. 143-138(k) reads as rewritten:

"(k) For purposes of use in the Code, the term 'Family Care Home' shall mean ~~a domiciliary home~~ an adult care home having two to six residents."

Sec. 31. G.S. 143B-139.5 reads as rewritten:

"§ 143B-139.5. Department of Human Resources; ~~domiciliary~~ adult care State/county share of costs.

State funds available to the Department of Human Resources shall pay fifty percent (50%), and the counties shall pay fifty percent (50%) of the authorized rates for ~~domiciliary care in homes for the aged and for family care homes~~ adult care homes including area mental health agency-operated or contracted-group homes."

Sec. 32. G.S. 143B-153(3) reads as rewritten:

"(3) The Social Services Commission shall have the power and duty to establish and adopt standards:

- a. For the inspection and licensing of maternity homes as provided by G.S. 131D-1;
- b. For the inspection and licensing of ~~domiciliary homes~~ adult care homes for aged or disabled persons as provided by G.S. 131D-2(b) and for personnel requirements of staff employed in ~~domiciliary homes, adult care homes.~~ Any proposed personnel requirements that would impose additional costs on owners of ~~domiciliary homes~~ adult care homes shall be reviewed by the Joint Legislative Commission on Governmental Operations before they are adopted;".

Sec. 33. G.S. 143B-178(2) reads as rewritten:

"(2) The term 'services for persons with developmental disabilities,' as it is used in this Article, means:

- a. Alternative community living arrangement services, employment related activities, child development services, and case management services; and
- b. Any other specialized services or special adaptations of generic services including diagnosis, evaluation, treatment, personal care, day care, ~~domiciliary care, adult care,~~ special living arrangements, training, education, sheltered employment, recreation and socialization, counseling of the individual with such a disability and of his family, protective and other social and sociolegal services, information and referral services, follow-along services, nonvocational social-developmental services, and transportation services necessary to assure delivery of services to persons with developmental disabilities, and services to promote and coordinate activities to prevent developmental disabilities."

Sec. 34. G.S. 143B-181.10(c) reads as rewritten:

"(c) Respite care services provided by the programs established by this section may include:

- (1) Counseling and training in the caregiving role, including coping mechanisms and behavior modification techniques;
- (2) Counseling and accessing available local, regional, and State services;
- (3) Support group development and facilitation;
- (4) Assessment and care planning for the patient of the caregiver;
- (5) Attendance and companion services for the patient in order to provide release time to the caregiver;
- (6) Personal care services, including meal preparation, for the patient of the caregiver;
- (7) Temporarily placing the person out of his home to provide the caregiver total respite when the mental or physical stress on the caregiver necessitates this type of respite.

Program funds may provide no more than the current ~~domiciliary home~~ adult care reimbursement rate for out of home placement. An out of home placement is defined as placement in a hospital, skilled or intermediate nursing facility, ~~domiciliary home~~, adult care home, adult day health center, or adult day care center. Duration of the service period may extend beyond a year."

**Sec. 35.** G.S. 143B-181.16(1) reads as rewritten:

- "(1) 'Long-term care facility' means any skilled nursing facility and intermediate care facility as defined in ~~G.S. 131A-4~~ G.S. 131A-3(4) or any ~~domiciliary home~~ adult care home as defined in G.S. 131D-20(2)."

**Sec. 36.** G.S. 168-21(1) reads as rewritten:

- "(1) 'Family care home' means ~~a home~~ an adult care home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident handicapped persons."

**Sec. 37.** Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed.

**Sec. 38.** Unless otherwise specified, this act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 256

## CHAPTER 536

AN ACT TO REMOVE LANGUAGE REQUIRING AN ATTORNEY'S OPINION AND WRITTEN STATEMENT IN APPEALS BY INDIGENTS OF A JUDGMENT IN A CIVIL ACTION.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 1-288 reads as rewritten:

"§ 1-288. *Appeals by indigents; clerk's fees.*

When any party to a civil action tried and determined in the superior or district court at the time of trial or special proceeding desires an appeal from

the judgment rendered in the action to the Appellate Division, and is unable, by reason of poverty, to make the deposit or to give the security required by law for the appeal, it shall be the duty of the judge or clerk of said court to make an order allowing the party to appeal from the judgment to the Appellate Division as in other cases of appeal, without giving security therefor. The party desiring to appeal from the judgment or order in a civil action or special proceeding shall, within 30 days after the entry of the judgment or order, make affidavit that he or she is unable by reason of poverty to give the security required by law, ~~and that he or she is advised by a practicing attorney that there is error in a matter of law in the decision of the court in the action. The affidavit must be accompanied by a written statement from a practicing attorney of the court that the attorney has examined the affiant's case, and is of opinion that the decision of the court, in the action, is contrary to law, law.~~ Nothing contained in this section deprives the clerk of the superior court of the right to demand the fees for the certificate and seal as now allowed by law in such cases. Provided, that where the judge or the clerk has made an order allowing the appellant to appeal as an indigent and the appeal has been filed in the Appellate Division, and an error or omission has been made in the affidavit or certificate of counsel, and the error is called to the attention of the court before the hearing of the argument of the case, the court shall permit an amended affidavit or certificate to be filed correcting the error or omission."

Sec. 2. This act becomes effective October 1, 1995, and applies to all appeals by indigents from a judgment or order entered on or after that date.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 712

## CHAPTER 537

AN ACT TO AUTHORIZE THE CITY OF DURHAM AND DURHAM COUNTY TO APPLY TO THE SUPERIOR COURT FOR COMPENSATORY AND PUNITIVE DAMAGES IN CASES WHERE INTENTIONAL DISCRIMINATION IS FOUND IN EMPLOYMENT PRACTICES AND TO AUTHORIZE PARTIES TO ELECT BETWEEN HAVING A HEARING IN SUPERIOR COURT OR BEFORE THE ENFORCEMENT AGENCY.

*The General Assembly of North Carolina enacts:*

**Section 1.** Section 2 of Chapter 227 of the 1993 Session Laws reads as rewritten:

"Sec. 2. Authority to adopt ordinances. -- A city or county may adopt ordinances to prohibit discrimination in employment and public accommodations based on race, color, national origin, religion, sex, disability, or having attained the age of 40 or more years. To assist in the enforcement of these ordinances, a city or county may create an agency or commission of the city or county ('the Agency') to take any actions and to have any powers as are appropriate and necessary to implement these ordinances including, but not limited to, the powers to: receive; initiate; investigate; seek to conciliate; hold hearings on and pass upon complaints;



mediate alleged violations of these ordinances; issue orders against persons it finds, after notice and hearing, to have violated these ordinances; and to seek enforcement of the orders by a court.

The General Assembly does not intend to expand the authority or powers of the Agency beyond those prescribed by federal laws or regulations with respect to a specific employer or public accommodation. The Agency may, as part of an enforcing order, require any person to cease and desist from unlawful practices and to engage in additional remedial action as may be appropriate, including, but not limited to, require the person:

- (1) To hire, reinstate, or upgrade aggrieved individuals, with or without back pay;
- (2) To admit aggrieved individuals or to allow aggrieved individuals to participate in guidance programs, apprenticeship training programs, on-the-job training programs, or other occupational training or retraining programs; and to use objective criteria in the admission of any individual to these programs;
- (3) To submit to the Agency, for approval or disapproval, plans to eliminate or reduce imbalance with respect to race, color, national origin, religion, sex, disability, or age;
- (4) To provide technical assistance to aggrieved individuals;
- (5) To report as to the manner of compliance with this act;
- (6) To post notices in conspicuous places in the form prescribed by the Agency;
- (7) To admit or restore an aggrieved individual to a place of public accommodation.

When the Commission determines that a respondent has engaged in unlawful intentional discrimination in an employment practice (not an employment practice that is unlawful because of its disparate impact), the Commission may enforce an ordinance adopted pursuant to this act by applying to the superior court of the county in which the city is predominantly located for any appropriate legal and equitable remedies, including, but not limited to, mandatory and prohibitory injunctions and orders of abatement, attorneys' fees, compensatory and punitive damages, and the court may grant such remedies. A complainant shall not recover punitive damages against a respondent unless the complainant demonstrates that the respondent engaged in a discriminatory practice with malice or with reckless indifference to the protected rights of an aggrieved individual under an ordinance adopted pursuant to this act.

No compensatory damages shall be awarded for back pay, interest on back pay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(g), as amended.

If a complainant seeks compensatory or punitive damages in an action brought under an ordinance adopted pursuant to this act, any party may demand a trial by jury."

**Sec. 2.** Chapter 227 of the 1993 Session Laws is amended by adding a new section to read:

"Sec. 2.1. Election of forum. Any ordinance adopted by the city pursuant to this act shall permit either party in a cause filed with the Agency, after efforts at conciliation have failed, to elect between having a



hearing on the matter in the Durham County Superior Court or before the Agency.

If the court, in a case filed pursuant to an election made under the ordinance and this section, finds that the respondent has engaged in or is engaging in an unlawful employment or public accommodations practice charged in the complaint, the court may enjoin the respondent from engaging in the unlawful employment or public accommodations practice and order any action set forth in Section 2 of this act, and, in the case of intentional discrimination in an employment practice, the court may award any appropriate legal and equitable remedies, including, but not limited to, mandatory and prohibitory injunctions and orders of abatement, attorneys' fees, and compensatory and punitive damages. The provisions of Sections 3 and 5 of this act apply to any person electing to have a hearing before the Agency."

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

H.B. 168

## CHAPTER 538

# AN ACT TO IMPROVE THE ENFORCEMENT OF CHILD SUPPORT BY CREATING ADDITIONAL REMEDIES.

*The General Assembly of North Carolina enacts:*

## TITLE I. ADDITIONAL PENALTIES FOR FAILURE TO MEET CHILD SUPPORT OBLIGATIONS, AND CONFORMING STATUTES.

**Section 1.** Effective July 1, 1996, Chapter 50 of the General Statutes is amended by adding the following new section to read:

"§ 50-13.12. Forfeiture of licensing privileges for failure to pay child support.

(a) As used in this section, the term:

- (1) 'Licensing board' means a department, division, agency, officer, board, or other unit of State government that issues hunting, fishing, trapping, or occupational licenses or licensing privileges.
- (2) 'Licensing privilege' means the privilege of an individual to be authorized to engage in an activity as evidenced by hunting, fishing, and trapping licenses, and occupational, professional, and business licenses.
- (3) 'Obligee' means the individual or agency to whom a duty of support is owed or the individual's legal representative.
- (4) 'Obligor' means the individual who owes a duty to make child support payments under a court order.
- (5) 'Occupational license' means a license, certificate, permit, registration, or any other authorization issued by a licensing board that allows an obligor to engage in an occupation or profession.

(b) Upon a finding by the district court judge that the obligor is willfully delinquent in child support payments equal to at least one month's child support, and upon findings as to any specific licensing privileges held by the obligor, the court may revoke some or all of such privileges until the obligor shall have paid the delinquent amount in full. The court may stay any such

revocation upon conditions requiring the obligor to make full payment of the delinquency over time. Any such stay shall further be conditioned upon the obligor's maintenance of current child support. Upon an order revoking such privileges that does not stay the revocation, the clerk of superior court shall notify the appropriate licensing board that the obligor is delinquent in child support payments and that the obligor's licensing privileges are revoked until such time as the licensing board receives proof of certification by the clerk that the obligor is no longer delinquent in child support payments.

(c) An obligor may file a request with the clerk of superior court for certification that the obligor is no longer delinquent in child support payments upon submission of proof satisfactory to the clerk that the obligor has paid the delinquent amount in full. The clerk shall provide a form to be used by the obligor for a request for certification. If the clerk finds that the obligor has met the requirements for reinstatement under this subsection, then the clerk shall certify that the obligor is no longer delinquent and shall provide a copy of the certification to the obligor. Upon request of the obligor, the clerk shall mail a copy of the certification to the appropriate licensing board.

(d) If licensing privileges are revoked under this section, the obligor may petition the district court for a reinstatement of such privileges. The court may order the privileges reinstated conditioned upon full payment of the delinquency over time. Any order allowing license reinstatement shall additionally require the obligor's maintenance of current child support. Upon reinstatement under this subsection, the clerk of superior court shall certify that the obligor is no longer delinquent and provide a copy of the certification to the obligor. Upon request of the obligor, the clerk shall mail a copy of the certification to the appropriate licensing board.

(e) The obligor may provide a copy of the certification set forth in either subsection (c) or (d) to each licensing agency to which the obligor applies for reinstatement of licensing privileges. Upon request of the obligor, the clerk shall mail a copy of the certification to the appropriate licensing board. Upon receipt of a copy of the certification, the licensing board shall reinstate the license.

(f) Upon receipt of notification by the clerk that the obligor's licensing privileges are revoked, the board shall note the revocation on its records and take all necessary steps to implement and enforce the revocation. These steps shall not include the board's independent revocation process pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act, which process is replaced by the court process prescribed by this section. The revocation shall remain in full force and effect until the board receives certification under this section that the obligor is no longer delinquent in child support payments."

**Sec. 1.1.** Effective December 1, 1996, G.S. 50-13.12(a), as amended by Section 1 of this act, reads as rewritten:

"(a) As used in this section, the term:

- (1) 'Licensing board' means a department, division, agency, officer, board, or other unit of state government that issues hunting,

fishing, trapping, drivers, or occupational licenses or licensing privileges.

- (2) 'Licensing privilege' means the privilege of an individual to be authorized to engage in an activity as evidenced by hunting, fishing, or trapping licenses, regular and commercial drivers licenses, and occupational, professional, and business licenses.
- (3) 'Obligee' means the individual or agency to whom a duty of support is owed or the individual's legal representative.
- (4) 'Obligor' means the individual who owes a duty to make child support payments under a court order.
- (5) 'Occupational license' means a license, certificate, permit, registration, or any other authorization issued by a licensing board that allows an obligor to engage in an occupation or profession."

Sec. 1.2. Effective July 1, 1996, G.S. 50-13.9(d) reads as rewritten:

"(d) In a non-IV-D case, when an obligor fails to make a required payment of child support and is in arrears, the clerk of superior court shall mail by regular mail to the last known address of the obligor a notice of delinquency. The notice shall set out the amount of child support currently due and shall demand immediate payment of said amount. The notice shall also state that failure to make immediate payment will result in the issuance by the court of an enforcement order requiring the obligor to appear before a district court judge and show cause why the support obligation should not be enforced by income withholding, contempt of court, revocation of licensing privileges, or other appropriate means. Failure to receive the delinquency notice shall not be a defense in any subsequent proceeding. Sending the notice of delinquency shall be in the discretion of the clerk if the clerk has, during the previous 12 months, sent a notice or notices of delinquency to the obligor for nonpayment, or if income withholding has been implemented against the obligor or the obligor has been previously found in contempt for nonpayment under the same child support order.

If the arrearage is not paid in full within 21 days after the mailing of the delinquency notice, or without waiting the 21 days if the clerk has elected not to mail a delinquency notice for any of the reasons provided herein, the clerk shall cause an enforcement order to be issued and shall issue a notice of hearing before a district court judge. The enforcement order shall order the obligor to appear and show cause why he should not be subjected to income withholding or adjudged in contempt of court, or both, and shall order the obligor to bring to the hearing records and information relating to his ~~employment~~ employment, his licensing privileges, and the amount and sources of his disposable income. The enforcement order shall state:

- (1) That the obligor is under a court order to provide child support, the name of each child for whose benefit support is due, and information sufficient to identify the order;
- (2) That the obligor is delinquent and the amount of overdue support;
- (3) That the court may order the revocation of some or all of the obligor's licensing privileges if the obligor is delinquent in an amount equal to the support due for one month;

- (3) (4) That the court may order income withholding if the obligor is delinquent in an amount equal to the support due for one month;
- (4) (5) That income withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10;
- (5) (6) That failure to bring to the hearing records and information relating to his employment and the amount and sources of his disposable income will be grounds for contempt;
- (6) (7) That if income withholding is not an available or appropriate remedy, the court may determine whether the obligor is in contempt or whether any other enforcement remedy is appropriate.

The enforcement order may be signed by the clerk or a district court judge, and shall be served on the obligor pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. The clerk shall also notify the party to whom support is owed of the pending hearing. The clerk may withdraw the order to the supporting party upon receipt of the delinquent payment. On motion of the person to whom support is owed, with the approval of the district court judge, if ~~he~~ the district court judge finds it is in the best interest of the child, no enforcement order shall be issued.

When the matter comes before the court, the court shall proceed as in the case of a motion for income withholding under G.S. 110-136.5. If income withholding is not an available or adequate remedy, the court may proceed with contempt, imposition of a lien, or other available, appropriate enforcement remedies.

This subsection shall apply only to non-IV-D cases, except that the clerk shall issue an enforcement order in a IV-D case when requested to do so by an IV-D obligee."

**Sec. 1.3.** Effective July 1, 1996, Chapter 93B of the General Statutes is amended by adding the following new section to read:

"§ 93B-12. Revocation when licensing privilege forfeited for nonpayment of child support.

(a) Upon receipt of a court order, pursuant to G.S. 50-13.12, revoking the occupational license of a licensee under its jurisdiction, an occupational licensing board shall note the revocation in its records and follow the normal postrevocation rules and procedures of the board as if the revocation had been ordered by the board. The revocation shall remain in effect until the board receives certification by the clerk of superior court that the licensee is no longer delinquent in child support payments.

(b) Upon receipt of notification from the Department of Human Resources that a licensee under an occupational licensing board's jurisdiction has forfeited the licensee's occupational license pursuant to G.S. 110-142.1, then the occupational licensing board shall send a notice of intent to revoke or suspend the occupational license of that licensee as provided by G.S. 110-142.1(d). If the license is revoked as provided by the provisions of G.S. 110-142.1, the revocation shall remain in effect until the board receives certification by the designated representative or the child



support enforcement agency that the licensee is no longer delinquent in child support payments.

(c) If at the time the court revokes a license pursuant to subsection (a) of this section, or if at the time the occupational licensing board revokes a license pursuant to subsection (b) of this section, the occupational licensing board has revoked the same license under the licensing board's disciplinary authority over licensees under its jurisdiction, and that revocation period is greater than the revocation period resulting from forfeiture pursuant to G.S. 50-13.12 or G.S. 110-142.1 then the revocation period imposed by the occupational licensing board applies.

(d) Immediately upon certification by the clerk of superior court or the child support enforcement agency that the licensee whose license was revoked pursuant to subsection (a) or (b) of this section is no longer delinquent in child support payments, the occupational licensing board shall reinstate the license. Reinstatement of a license pursuant to this section shall be made at no additional cost to the licensee."

Sec. 1.4. Article 9 of Chapter 110 is amended by adding the following new sections to read:

"§ 110-142. Definitions; suspension and revocation of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child support or subject to outstanding warrants for failure to appear for failure to comply with the terms of a court order for child support.

The definitions in G.S. 110-129 and G.S. 147-54.12 apply to this section and G.S. 110-142.1, and G.S. 110-142.2. In addition, to these sections the following definitions apply:

- (1) 'Applicant' means any person applying for issuance or renewal of a license.
- (2) 'Board' means any department, division, agency, officer, board, or other unit of State government that issues licenses.
- (3) 'Certified list' means a list provided by the designated representative to the Department of Human Resources that verifies, under penalty of perjury, that the names contained therein are obligors who have been found to be out of compliance with a judgment or order for support in a IV-D case.
- (4) 'Compliance with an order for support' means that, as set forth in a judgment or order for child support or family support, the obligor is no more than 90 calendar days in arrears in making payments for current support, in making periodic payments on a support arrearage, or in making periodic payments on a reimbursement for public assistance, has obtained a judicial finding that precludes enforcement of the order, or has entered into a payment schedule, including G.S. 110-142.1(h), for the child support arrearage with the approval of the obligee in a IV-D case.
- (5) 'License' means (i) for the purposes of G.S. 110-142.1, a license, certificate, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession or (ii) for the purposes of G.S. 110-



142.2, a license to operate a regular or commercial motor vehicle, or to participate in hunting, fishing, or trapping.

(6) 'Licensee' means any person holding a license.

(7) 'Obligor' means the individual who owes a duty to make child support payments under a court order.

"§ 110-142.1. IV-D notified suspension, revocation, and issuance of occupational, professional, or business licenses of obligors who are delinquent in court-ordered child support or subject to outstanding warrants for failure to appear for failure to comply with the terms of a court order for child support.

(a) Effective July 1, 1996, the Department of Human Resources may notify any board that a person licensed by that board is not in compliance with an order for child support.

(b) The designated representative shall maintain a list of those obligors included in a IV-D case for which a child support order has been rendered by, or registered in, a court of this State, and who are not in compliance with that order. The designated representative shall submit a certified list with the names, social security numbers, and last known address of these obligors and the name, address, and telephone number of the person who certified the list to the Department of Human Resources, Division of Social Services, Child Support Enforcement Office. The designated representative shall verify, under penalty of perjury, that the obligors listed are subject to an order for the payment of support and that these persons are not in compliance with the order. An updated certified list shall be submitted to the Department on a monthly basis.

The Department of Human Resources, Division of Social Services, Child Support Enforcement Office, shall consolidate the certified lists received from the designated representatives and, within 30 calendar days of receipt, shall furnish each board with a certified list of its obligors, as specified in this section.

(c) Each board shall coordinate with the Department of Human Resources, Division of Social Services, Child Support Enforcement Office, in the development of forms and procedures to implement this section.

(d) Promptly after receiving the certified list of obligors from the Department of Human Resources, each board shall determine whether its applicant or licensee is an obligor on the list. If the applicant or licensee is an obligor on the list, the board shall immediately send notice as specified in this subsection to the applicant or licensee of the board's intent to revoke or suspend the licensee's license in 20 days from the date of the notice, or that the board is withholding issuance or renewal of an applicant's license, until the designated representative certifies that the applicant or licensee is entitled to be licensed or reinstated. The notice shall be made personally or by certified mail to the obligor's last known mailing address on file with the board.

(e) Unless notified by the designated representative as provided in subsection (h) of this section, the board shall revoke or suspend the obligor's license 20 days from the date of the notice to the obligor of the board's intent to revoke or suspend the license. In the event that a license is revoked or application is denied pursuant to this section, the board is not required to refund fees paid by the obligor.

(f) Notices shall be developed by each board in accordance with guidelines provided by the Department of Human Resources and shall be subject to the approval of the Department of Human Resources. The notice shall include the address and telephone number of the designated representative who submitted the name on the certified list, and shall emphasize the necessity of obtaining a certification of compliance from the designated representative or the child support enforcement agency as a condition of issuance, renewal, or reinstatement of the license. The notice shall inform the obligor that if a license is revoked or application is denied pursuant to this subsection, the board is not required to refund fees paid by the obligor. The Department of Human Resources shall also develop a form that the obligor shall use to request a review by the designated representative. A copy of this form shall be included with every notice sent pursuant to subsection (d) of this section.

(g) The Department of Human Resources shall establish review procedures consistent with this section to allow an obligor to have the underlying arrearage and any relevant defenses investigated, to provide an obligor information on the process of obtaining a modification of a support order, or, if the circumstances so warrant, to provide an obligor assistance in the establishment of a payment schedule on arrears.

(h) If the obligor wishes to challenge the submission of the obligor's name on the certified list or negotiate a payment schedule, the obligor shall within 14 days of the date of notice from the board request a review from the designated representative. The designated representative shall within six days of the date of the obligor's request for review notify the appropriate board of the obligor's request for review and direct the board to stay any action revoking or suspending the obligor's license until further notice from the designated representative. The designated representative shall review the obligor's case and inform the obligor in writing of the representative's findings and decision upon completion of the review. The designated representative shall immediately send a notice to the appropriate board certifying the obligor's compliance with this section if the obligor is found to be no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or reimbursement. The agreement shall also provide for the maintenance of current support obligations and shall be incorporated into a consent order to be entered by the court. If the obligor fails to meet the conditions of this subsection, the designated representative shall notify the appropriate board to immediately revoke or suspend the obligor's license. Upon receipt of notice from the designated representative, the board shall immediately revoke or suspend the obligor's license.

(i) The designated representative shall notify the obligor in writing that the obligor may, by filing a motion, request any or all of the following:

- (1) Judicial review of the designated representative's decision.
- (2) A judicial determination of compliance.
- (3) A modification of the support order.

The notice shall also contain the name and address of the court in which the obligor shall file the motion and inform the obligor that the obligor's name shall remain on the certified list unless the judicial review results in a

finding by the court that the obligor is no longer in arrears or that the obligor's license should be reinstated under subsection (k) of this section. The notice shall also inform the obligor that the obligor must comply with all statutes and rules of court regarding motions and notices of hearing and that any motion filed under this section is subject to the limitations of G.S. 50-13.10.

(j) The motion for judicial review of the designated representative's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. After service of the request for review, the court shall hold an evidentiary hearing at the next regularly scheduled session for the hearing of child support matters in civil district court. The request for judicial review shall be served by the obligor upon the designated representative who submitted the obligor's name on the certified list within seven calendar days of the filing of the motion.

(k) If the judicial review results in a finding by the court that the obligor is no longer in arrears or that the obligor's license should be reinstated to allow the obligor an opportunity to comply with a payment schedule on arrears or reimbursement and current support obligations, the designated representative shall immediately send a notice to the appropriate board certifying the obligor's compliance with this section. In the event of appeal from the judicial review, the license revocation shall not be stayed unless the court specifically provides otherwise.

(l) The Department of Human Resources shall prescribe forms for use by the designated representative. When the obligor is no longer in arrears or negotiates an agreement with the designated representative for a payment schedule on arrears or reimbursement as provided in subsection (h) of this section, the designated representative shall mail to the obligor and the appropriate board a notice certifying that the obligor is in compliance. The receipt of certification shall serve to notify the obligor and the board that, for the purposes of this section, the obligor is in compliance with the order for support.

(m) The Department of Human Resources may enter into interagency agreements with the boards necessary to implement this section.

(n) The procedures specified in Articles 3 and 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, shall not apply to the denial or failure to issue or renew a license pursuant to this section.

(o) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or revoked under this section shall respond only that the license was denied or revoked pursuant to this section. Information collected pursuant to this section shall be confidential and shall not be disclosed except in accordance with the laws of this State.

(p) If any provision of this section or its application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.



"§ 110-142.2. Suspension, revocation, restriction of license to operate a motor vehicle or hunting, fishing, or trapping licenses; refusal of registration of motor vehicle.

(a) Effective December 1, 1996, notwithstanding any other provision of law, when an obligor is at least 90 days in arrears in making child support payments, the child support enforcement agency may apply to the court, pursuant to the regular show cause and contempt provisions of G.S. 50-13.9(d), for an order doing any of the following:

- (1) Revoking the obligor's regular or commercial license to operate a motor vehicle;
- (2) Revoking the obligor's hunting, fishing, or trapping licenses;
- (3) Directing the Department of Transportation, Division of Motor Vehicles, to refuse, pursuant to G.S. 20-50.4, to register the obligor's motor vehicle.

(b) Upon finding that the obligor has willfully failed to comply with the child support order, and that the obligor is at least 90 days in arrears, the court may enter an order instituting the sanctions as provided in subsection (a) of this section. The court may stay the effectiveness of the sanctions upon conditions requiring the obligor to make full payment of the delinquency over time. Any such stay shall also be conditioned upon the obligor's maintenance of current child support. Upon entry of an order pursuant to this section that is not stayed, the obligor shall surrender any licenses revoked by the court's order to the child support enforcement agency and the agency shall forward a report to the appropriate licensing authority within 30 days of the order.

(c) If the obligor's regular or commercial drivers license is revoked under this section and the court, after the hearing, makes a finding that a license to operate a motor vehicle is necessary to the obligor's livelihood, the court may issue a limited driving privilege, with those terms and conditions applying as the court shall prescribe. An obligor whose license has been revoked for reasons not related to this section and whose license remains revoked at the time of the hearing shall not be eligible and may not be issued a limited driving privilege. The court may modify or revoke the limited driving privilege pursuant to G.S. 20-179.3(i).

(d) An obligor may file a request with the child support enforcement agency for certification that the obligor is no longer delinquent in child support payments upon submission of proof satisfactory to the child support enforcement agency that the obligor has paid the delinquent amount in full. The child support enforcement agency shall provide a form to be used by the obligor for a request for certification. If the child support enforcement agency finds that the obligor has met the requirements for reinstatement under this subsection, then the child support enforcement agency shall certify that the obligor is no longer delinquent and shall provide a copy of the certification to the obligor.

(e) If licensing privileges are revoked under this section, the obligor may petition the district court for a reinstatement of such privileges. The court may order the privileges reinstated conditioned upon full payment of the delinquency over time. Any order allowing license reinstatement shall additionally require the obligor's maintenance of current child support.

Upon reinstatement under this subsection, the child support enforcement agency shall certify that the obligor is no longer delinquent and shall provide a copy of the certification to the obligor.

(f) Upon receipt of certification under subsection (d) or (e) of this section, the Division of Motor Vehicles shall reinstate the license to operate a motor vehicle in accordance with G.S. 20-24.1, and remove any restriction of the obligor's motor vehicle registration.

(g) Upon receipt of certification under subsection (d) or (e) of this section, the licensing board having jurisdiction over the obligor's hunting, fishing, or trapping license shall reinstate the license.

(h) If the court imposes sanctions under subdivision (3) of subsection (a) of this section and the sanctions are stayed upon conditions as provided in subsection (b) of this section, the child support enforcement agency may, without any further application to the court, notify the Division of Motor Vehicles if the obligor violates the terms and conditions of the stay. The Division shall then take such action as provided in subdivision (3) of subsection (a) of this section. The Division shall not remove any restriction of the obligor's motor vehicle registration, until receipt of certification pursuant to subsection (d) or (e) of this section.

(i) The Department of Human Resources, the Administrative Office of the Courts, the Division of Motor Vehicles, and the Department of Environment, Health, and Natural Resources shall work together to develop the forms and procedures necessary for the implementation of this process."

Sec. 2. (a) G.S. 20-15.1 reads as rewritten:

"§ 20-15.1. Revocations when licensing privileges forfeited after conviction of a crime, forfeited.

The Division shall revoke the license of a person whose licensing privileges have been forfeited under G.S. 15A-1331A, 15A-1331A, 50-13.12, and 110-142.2. If a revocation period set by this Chapter is longer than the revocation period resulting from the forfeiture of licensing privileges, the revocation period in this Chapter applies."

(b) G.S. 20-17 is amended by adding a new subdivision to read:

"(12) On the basis of information provided by the child support enforcement agency or the clerk of court, the Division shall ensure that no license or right to operate a motor vehicle under this Chapter is renewed or issued to an obligor who is delinquent in making child support payments when a court of record has issued a revocation order pursuant to G.S. 110-142.2 or G.S. 50-13.12. The obligor shall not be entitled to any other hearing before the Division as a result of the revocation of his license pursuant to G.S. 110-142.2 or G.S. 50-13.12."

(c) G.S. 20-24 reads as rewritten:

"§ 20-24. When court or child support enforcement agency to forward license to Division and report ~~convictions~~ convictions, child support delinquencies, and prayers for judgment continued.

(a) License. -- A court that convicts a person of an offense that requires revocation of the person's drivers license or revokes a person's drivers license pursuant to G.S. 50-13.12 shall require the person to give the court any regular or commercial drivers license issued to that person. A court



that convicts a person of an offense that requires disqualification of the person but would not require revocation of a regular drivers license issued to that person shall require the person to give the court any Class A or Class B regular drivers license and any commercial drivers license issued to that person.

The clerk of court in a non-IV-D case, and the child support enforcement agency in a IV-D case, shall accept a drivers license required to be given to the court under this subsection. A clerk of court or the child support enforcement agency who receives a drivers license shall give the person whose license is received a copy of a dated receipt for the license. The receipt must be on a form approved by the Commissioner. A revocation or disqualification for which a license is received under this subsection is effective as of the date on the receipt for the license.

The clerk of court or the child support enforcement agency shall notify the Division of a license received under this subsection either by forwarding to the Division the license, a record of the conviction for which the license was received, a copy of the court order revoking the license for failure to pay child support for which the license was received, and the original dated receipt for the license or by electronically sending to the Division the information on the license, the record of conviction, conviction or court order revoking the license for failure to pay child support, and the receipt given for the license. The clerk of court or the child support enforcement agency must forward the required items unless the Commissioner has given the clerk of court or the child support enforcement agency approval to notify the Division electronically. If the clerk of court or the child support enforcement agency notifies the Division electronically, the clerk of court or the child support enforcement agency must destroy a license received after sending to the Division the required information. The clerk of court or the child support enforcement agency shall notify the Division within 30 days after entry of the conviction or court order revoking the license for failure to pay child support for which the license was received.

(b) Convictions Convictions, court orders of drivers license revocations, and PJs. -- The clerk of court shall send the Division a record of any of the following:

- (1) A conviction of a violation of a law regulating the operation of a vehicle.
- (2) A conviction for which the convicted person is placed on probation and a condition of probation is that the person not drive a motor vehicle for a period of time, stating the period of time for which the condition applies.
- (3) A conviction of a felony in the commission of which a motor vehicle is used, when the judgment includes a finding that a motor vehicle was used in the commission of the felony.
- (4) A conviction that requires revocation of the drivers license of the person convicted and is not otherwise reported under subdivision (1).
- (4a) A court order revoking drivers license pursuant to G.S. 50-13.12.

- (5) An order entering prayer for judgment continued in a case involving an alleged violation of a law regulating the operation of a vehicle.

The child support enforcement agency shall send the Division a record of any court order revoking drivers license pursuant to G.S. 110-142.2(a)(1).

With the approval of the Commissioner, the clerk of court or the child support enforcement agency may forward a record of conviction conviction, court order revoking drivers license, or prayer for judgment continued to the Division by electronic data processing means.

(b1) In any case in which the Division, for any reason, does not receive a record of a conviction or a prayer for judgment continued until more than one year after the date it is entered, the Division may, in its discretion, substitute a period of probation for all or any part of a revocation or disqualification required because of the conviction or prayer for judgment continued.

(c) Repealed by Session Laws 1991, c. 726, s. 10.

(d) Scope. -- This Article governs drivers license revocation and disqualification. A drivers license may not be revoked and a person may not be disqualified except in accordance with this Article.

(e) Special Information. -- A judgment for a conviction for an offense for which special information is required under this subsection shall, when appropriate, include a finding of the special information. The convictions for which special information is required and the specific information required is as follows:

- (1) Homicide. -- If a conviction of homicide involves impaired driving, the judgment must indicate that fact.
- (2) G.S. 20-138.1, Driving While Impaired. -- If a conviction under G.S. 20-138.1 involves a commercial motor vehicle, the judgment must indicate that fact. If a conviction under G.S. 20-138.1 involves a commercial motor vehicle that was transporting a hazardous substance required to be placarded, the judgment must indicate that fact.
- (3) G.S. 20-138.2, Driving Commercial Motor Vehicle While Impaired. -- If the commercial motor vehicle involved in an offense under G.S. 20-138.2 was transporting a hazardous material required to be placarded, a judgment for that offense must indicate that fact.
- (4) G.S. 20-166, Hit and Run. -- If a conviction under G.S. 20-166 involves a commercial motor vehicle, the judgment must indicate that fact. If a conviction under G.S. 20-166 involves a commercial motor vehicle that was transporting a hazardous substance required to be placarded, the judgment must indicate that fact.
- (5) Felony Using Commercial Motor Vehicle. -- If a conviction of a felony in which a commercial motor vehicle was used involves the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance, the judgment must indicate that fact. If a commercial motor vehicle used in a felony was transporting a

hazardous substance required to be placarded, the judgment for that felony must indicate that fact."

(d) G.S. 20-24.1(c) reads as rewritten:

"(c) If the person satisfies the conditions of subsection (b) that are applicable to his case before the effective date of the revocation order, the revocation order and any entries on his driving record relating to it shall be deleted and the person does not have to pay the restoration fee set by G.S. 20-7(i1). For all other revocation orders issued pursuant to this section, G.S. 50-13.12 or G.S. 110-142.2, the person must pay the restoration fee and satisfy any other applicable requirements of this Article before ~~he~~ the person may be relicensed."

(e) G.S. 20-28(a) reads as rewritten:

"(a) Driving While License Revoked. -- Except as provided in subsection (a1) of this section, Any any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for operating driving without a drivers license."

(f) G.S. 20-28(a1) reads as rewritten:

"(a1) Driving Without Reclaiming License. -- A person convicted under subsection (a) shall be punished as if ~~he~~ the person had been convicted of driving without a license under G.S. 20-7 20-35 if ~~he~~ the person demonstrates to the court ~~that;~~ that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

(1) At the time of the offense, ~~his~~ the person's license was revoked solely under G.S. 20-16.5; and

(2) a. The offense occurred more than 30 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 30 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 10 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5, 20-16.5; or

(3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if ~~he~~ the person had been convicted of driving without a license under G.S. 20-7, 20-35, and the conviction report sent to the Division must indicate that the person is to be so treated."

(g) Effective December 1, 1996, G.S. 20-50.4 reads as rewritten:

"§ 20-50.4. Division to refuse to register vehicles on which taxes are ~~delinquent~~, delinquent and when there is a failure to meet court-ordered child support obligations.

Upon receiving the list of motor vehicle owners and motor vehicles sent by county tax collectors pursuant to G.S. 105-330.7 or a report from a child support enforcement agency that sanctions pursuant to G.S. 110-142.2(a)(3) have been imposed, the Division shall refuse to register for the owner named in the list any vehicle identified in the list until the vehicle owner presents the Division with a paid tax receipt identifying the vehicle for which registration was ~~refused~~, refused or, if the owner was on the report furnished by a child support enforcement agency, the Division shall refuse to register a vehicle for the owner until such time as the Division receives certification pursuant to G.S. 110-142.2.

The Division shall not refuse to register a vehicle for a person, not named in the list, to whom the vehicle has been transferred in good faith. Where a motor vehicle owner named in the list has transferred the registration plates from the motor vehicle identified in the list to another motor vehicle pursuant to G.S. 20-64 during the first vehicle's tax year, the Division shall refuse registration of the second vehicle until the vehicle owner presents the Division with a paid tax receipt identifying the vehicle from which the plates were transferred."

(h) G.S. 20-179.3(k) reads as rewritten:

"(k) Copy of Limited Driving Privilege to Division; Action Taken if Privilege Invalid. -- The clerk of court or the child support enforcement agency must send a copy of any limited driving privilege issued in the county to the Division. A limited driving privilege that is not authorized by this section, G.S. 20-16.2(e1), ~~or G.S. 20-16.1~~, 20-16.1, 50-13.12, or 110-142.2, or that does not contain the limitations required by law, is invalid. If the limited driving privilege is invalid on its face, the Division must immediately notify the court and the holder of the privilege that it considers the privilege void and that the Division records will not indicate that the holder has a limited driving privilege."

(i) G.S. 150B-3 reads as rewritten:

"§ 150B-3. Special provisions on licensing.

(a) When an applicant or a licensee makes a timely and sufficient application for issuance or renewal of a license or occupational license, including the payment of any required license fee, the existing license or occupational license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license or occupational license are limited, until the last day for applying for judicial review of the agency order. This subsection does not affect agency action summarily suspending a license or occupational license under subsections (b) and (c) of this section.

(b) Before the commencement of proceedings for the suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of any license other than an occupational license, the agency shall give notice to the licensee, pursuant to the provisions of G.S. 150B-23. Before the commencement of such proceedings involving an occupational license, the agency shall give notice pursuant to the provisions of G.S. 150B-38. In



either case, the licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license or occupational license.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license or occupational license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to February 1, 1976, which provide for the summary suspension of a license.

(d) This section does not apply to revocations of occupational licenses based solely on a court order of child support delinquency or a Department of Human Resources determination of child support delinquency issued pursuant to G.S. 110-142, 110-142.1, 110-142.2."

## TITLE II. CLARIFICATION OF THE DUTIES AND RESPONSIBILITIES OF THE CHILD SUPPORT ENFORCEMENT PROGRAM AS IT RELATES TO MODIFICATION OF CHILD SUPPORT ORDERS AND LOCATING ABSENT PARENTS.

Sec. 3. G.S. 110-130.1 reads as rewritten:

"§ 110-130.1. *Non-AFDC services.*

(a) All child support collection and paternity determination services provided under this Article to recipients of public assistance shall be made available to any individual not receiving public assistance in accordance with federal law and as contractually authorized by the nonrecipient, upon proper application and payment of a nonrefundable application fee of ten dollars (\$10.00).

(b) Repealed by Session Laws 1989, c. 490.

(b1) In cases in which a public assistance debt which accrued pursuant to G.S. 110-135 remains unrecovered, support payments shall be transmitted to the Department of Human Resources for appropriate distribution. When services are terminated and all costs and any public assistance debts have been satisfied, the support payment shall be redirected to the client.

(c) Actions or proceedings to ~~establish or enforce~~ establish, enforce, or modify a duty of support or establish paternity as initiated under this Article shall be brought in the name of the county or State agency on behalf of the public assistance recipient or nonrecipient client. Collateral disputes between a custodial parent and noncustodial parent, involving visitation, custody and similar issues, shall be considered only in separate proceedings from actions initiated under this Article. The attorney representing the designated representative of programs under Title IV-D of the Social Security Act shall be deemed attorney of record only for proceedings under this Article, and not for such the separate proceedings. No attorney/client relationship shall be considered to have been created between the attorney who represents the child support enforcement agency and any person by virtue of the action of the attorney in providing the services required.



(c1) The Department is hereby authorized to use the electronic and print media in attempting to locate absent and deserting parents. Due diligence must be taken to ensure that the information used is accurate or has been verified. Print media shall be under no obligation or duty, except that of good faith, to anyone to verify the correctness of any information furnished to it by the Department or county departments of social services.

(d) Any fee imposed by the North Carolina Department of Revenue or the Secretary of the Treasury to cover their costs of withholding for non-AFDC arrearages certified for the collection of past due support from State or federal income tax refunds shall be borne by the client by deducting the fee from the amount collected.

Any income tax refund offset amounts which are subsequently determined to have been incorrectly withheld and distributed to a client, and which must be refunded by the State to a responsible parent or the nondebtor spouse, shall constitute a debt to the State owed by the client."

### TITLE III. CLARIFICATION OF THE AUTHORITY OF THE DEPARTMENT OF HUMAN RESOURCES TO ACCESS FINANCIAL INFORMATION ON ABSENT PARENTS FOR THE ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS.

Sec. 4. G.S. 110-139 is amended by adding the following new subsections to read:

"(d) Notwithstanding any other provision of law making this information confidential, including Chapter 53B of the General Statutes, any utility company or financial institution, including federal, State, commercial, or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business in this State or incorporated under the laws of this State shall provide the Department of Human Resources with the following information upon certification by the Department that the information is needed to locate a parent for the purpose of collecting child support or to establish or enforce an order for child support: full name, social security number, address, telephone number, account numbers, and other identifying data for any person who maintains an account at the utility company or financial institution. A utility company or financial institution that discloses information pursuant to this subsection in good faith reliance upon certification by the Department is not liable for damages resulting from the disclosure.

(e) Subsection (d) of this section shall not apply to telecommunication utilities or providers of electronic communication service to the general public."

### TITLE IV. CLARIFICATION AND MAKING UNIFORM THE ABILITY OF PARENTS OF LEGITIMATE CHILDREN TO ENTER INTO VOLUNTARY SUPPORT AGREEMENTS.

Sec. 5. G.S. 110-133 reads as rewritten:

"§ 110-133. *Agreements of support.*

In lieu of or in conclusion of any legal proceeding instituted to obtain support from a responsible parent for a dependent child born of the marriage, from the responsible parent, a written agreement to support said

the child by periodic payments executed by the responsible parent when acknowledged before a certifying officer or notary public or the equivalent or corresponding person of the state, ~~territory~~ territory, or foreign country where the acknowledgment is made and filed with and approved by a judge of the district court in the county where the ~~mother~~ custodial parent of the child resides or is found, or in the county where the ~~father~~ noncustodial parent resides or is found, or in the county where the child resides or is found shall have the same force and effect, retroactively and prospectively, in accordance with the terms of ~~said~~ the agreement, as an order of support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases."

**TITLE V. INSURER'S DUTY TO ASCERTAIN ANY PAST-DUE CHILD SUPPORT OBLIGATION BEFORE PAYING INSURANCE SETTLEMENT.**

**Sec. 6.** (a) Effective July 1, 1996, Article 9 of Chapter 44 of the General Statutes is amended by adding the following new section to read:

*"§ 44-49.1. Lien created for payment of past-due child support obligations.*

*(a) In the event that the Department of Human Resources or any other obligee, as defined in G.S. 110-129, provides written notification to an insurance company authorized to issue policies of insurance pursuant to this Chapter that a claimant or beneficiary under a contract of insurance owes past-due child support and accompanies this information with a certified copy of the court order ordering support together with proof that the claimant or beneficiary is past due in meeting this obligation, there is created a lien upon any insurance proceeds in favor of the Department or obligee. This section shall apply only in those instances in which there is a nonrecurring payment of a lump-sum amount equal to or in excess of three thousand dollars (\$3,000) or periodic payments with an aggregate amount that equals or exceeds three thousand dollars (\$3,000)."*

*(b) Effective July 1, 1996, G.S. 44-50 reads as rewritten:*

*"§ 44-50. Receiving person charged with duty of retaining funds for purpose stated; evidence; attorney's fees; charges.*

*Such a lien as provided for in G.S. 44-49 or G.S. 44-49.1 shall also attach upon all funds paid to any person in compensation for or settlement of the said injuries, whether in litigation or otherwise; and it shall be the duty of any person receiving the same before disbursement thereof to retain out of any recovery or any compensation so received a sufficient amount to pay the just and bona fide claims for such drugs, medical supplies, ambulance service and medical attention and/or hospital service, and past-due child support obligations, after having received and accepted notice thereof: Provided, that evidence as to the amount of such charges shall be competent in the trial of any such action: Provided, further, that nothing herein contained shall be construed so as to interfere with any amount due for attorney's services: Provided, further, that the lien hereinbefore provided for shall in no case, exclusive of attorneys' fees, exceed fifty percent (50%) of the amount of ~~damages~~ moneys recovered."*

**TITLE VI. REPEAL OF THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT AND ENACTMENT OF THE UNIFORM INTERSTATE FAMILY SUPPORT ACT.**

**Sec. 7.** (a) Effective January 1, 1996, Chapter 52A of the General Statutes is repealed.

(b) The repeal of the Uniform Reciprocal Enforcement of Support Act under subsection (a) of this section does not affect pending actions, rights, duties, or liabilities based on the Act, nor does it alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the Act. After the effective date of this act, all laws repealed shall be treated as remaining in full force and effect for the purpose of sustaining any pending or vested right as of the effective date of this act and for the enforcement of rights, duties, penalties, forfeitures, and liabilities under the repealed laws.

(c) Effective January 1, 1996, the General Statutes are amended by adding the following new Chapter to read:

"Chapter 52C.

"Uniform Interstate Family Support Act.

"ARTICLE 1.

"General Provisions.

"§ 52C-1-100. Short title.

This Chapter may be cited as the Uniform Interstate Family Support Act.

"§ 52C-1-101. Definitions.

As used in this Article, unless the context clearly requires otherwise, the term:

- (1) 'Child' means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.
- (2) 'Child support order' means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.
- (3) 'Duty of support' means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.
- (4) 'Home state' means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six-months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.
- (5) 'Income' includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this State.
- (6) 'Income-withholding order' means an order or other legal process directed to a payer of income to withhold support from the income of the obligor.
- (7) 'Initiating state' means a state in which a proceeding under this Act or a law substantially similar to this Act, the Uniform

- Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act is filed for forwarding to a responding state.
- (8) 'Initiating tribunal' means the authorized tribunal in an initiating state.
- (9) 'Issuing state' means the state in which a tribunal issues a support order or renders a judgment determining parentage.
- (10) 'Issuing tribunal' means the tribunal that issues a support order or renders a judgment determining parentage.
- (11) 'Law' includes decisional and statutory law and rules and regulations having the force of law.
- (12) 'Obligee' means:
- (i) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;
- (ii) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or
- (iii) An individual seeking a judgment determining parentage of the individual's child.
- (13) 'Obligor' means an individual, or the estate of a decedent:
- (i) Who owes or is alleged to owe a duty of support;
- (ii) Who is alleged but has not been adjudicated to be a parent of a child; or
- (iii) Who is liable under a support order.
- (14) 'Register' means to file a support order or judgment determining paternity in the appropriate location for the recording or filing of foreign judgments generally or foreign support orders specifically.
- (15) 'Registering tribunal' means a tribunal in which a support order is registered.
- (16) 'Responding state' means a state to which a proceeding is forwarded under this Act or a law substantially similar to this Act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.
- (17) 'Responding tribunal' means the authorized tribunal in a responding state.
- (18) 'Spousal-support order' means a support order for a spouse or former spouse of the obligor.
- (19) 'State' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States. The term 'state' includes an Indian tribe and includes a foreign jurisdiction that has established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this Chapter.



- (20) 'Support enforcement agency' means a public official or agency authorized to seek enforcement of support orders or duties of support, to seek establishment or modification of child support, to seek determination of paternity, or to locate obligors or their assets.
- (21) 'Support order' means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrears, or reimbursement, and may include related costs and fees, interest, income withholding, attorneys' fees, and other relief.
- (22) 'Tribunal' means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine paternity, except that, for matters heard in this State, tribunal means the General Court of Justice, District Court Division.

"§ 52C-1-102. District court has jurisdiction under this Act.

The General Court of Justice, District Court Division is the court authorized to hear matters under this Act.

"§ 52C-1-103. Remedies.

Remedies provided by this Act are cumulative and do not affect the availability of remedies under other law.

"ARTICLE 2.

"Jurisdiction.

"Part 1. Extended Personal Jurisdiction.

"§ 52C-2-201. Bases for jurisdiction over nonresident.

In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this State may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (1) The individual is personally served with a summons and complaint within this State;
- (2) The individual submits to the jurisdiction of this State by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) The individual resided with the child in this State;
- (4) The individual resided in this State and provided prenatal expenses or support for the child;
- (5) The child resides in this State as a result of the acts or directives of the individual;
- (6) The individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse;
- (7) The individual asserted paternity in an affidavit which has been filed with the clerk of superior court; or
- (8) There is any other basis consistent with the constitutions of this State and the United States for the exercise of personal jurisdiction.

"§ 52C-2-202. Procedure when exercising jurisdiction over nonresident.



A court of this State exercising personal jurisdiction over a nonresident under G.S. 52C-2-201 may apply G.S. 52C-3-315 to receive evidence from another state, and G.S. 52C-3-317 to obtain discovery through a tribunal of another state. In all other respects, Articles 3 through 7 of this Chapter do not apply and the tribunal shall apply the procedural and substantive law of this State, including the rules on choice of law other than those established by this Chapter.

"Part 2. Proceedings Involving Two or More States.

"§ 52C-2-203. Initiating and responding tribunal of this State.

Under this Chapter, a tribunal of this State may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

"§ 52C-2-204. Simultaneous proceedings in another state.

(a) A tribunal of this State may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if:

(1) The petition or comparable pleading in this State is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;

(2) The contesting party timely challenges the exercise of jurisdiction in the other state; and

(3) If relevant, this State is the home state of the child.

(b) A tribunal of this State may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

(1) The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this State for filing a responsive pleading challenging the exercise of jurisdiction by this State;

(2) The contesting party timely challenges the exercise of jurisdiction in this State; and

(3) If relevant, the other state is the home state of the child.

"§ 52C-2-205. Continuing, exclusive jurisdiction.

(a) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a child support order:

(1) As long as this State remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) Until each individual party has filed written consent with the tribunal of this State for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this State issuing a child support order consistent with the law of this State may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this Chapter.

(c) If a child support order of this State is modified by a tribunal of another state pursuant to a law substantially similar to this Chapter, a

tribunal of this State loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this State, and may only:

- (1) Enforce the order that was modified as to amounts accruing before the modification;
- (2) Enforce nonmodifiable aspects of that order; and
- (3) Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(d) A tribunal of this State shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to this Chapter.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this State may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

"§ 52C-2-206. Enforcement and modification of support order by tribunal having continuing jurisdiction.

(a) A tribunal of this State may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(b) A tribunal of this State having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply G.S. 52C-3-315 to receive evidence from another state and G.S. 52C-3-317 to obtain discovery through a tribunal of another state.

(c) A tribunal of this State which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

"Part 3. Reconciliation With Orders of Other States.

"§ 52C-2-207. Recognition of child support orders.

(a) If a proceeding is brought under this Chapter, and one or more child support orders have been issued in this or another state with regard to an obligor and a child, a tribunal of this State shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

- (1) If only one tribunal has issued a child support order, the order of that tribunal must be recognized.
- (2) If two or more tribunals have issued child support orders for the same obligor and child, and only one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the order of that tribunal must be recognized.
- (3) If two or more tribunals have issued child support orders for the same obligor and child, and more than one of the tribunals would have continuing, exclusive jurisdiction under this Chapter, an

order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.

- (4) If two or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under this Chapter, the tribunal of this State may issue a child support order, which must be recognized.

(b) The tribunal that has issued an order recognized under subsection (a) of this section is the tribunal having continuing, exclusive jurisdiction.

"§ 52C-2-208. Multiple child support orders for two or more obligees.

In responding to multiple registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this State shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this State.

"§ 52C-2-209. Credit for payments.

Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this State.

### "ARTICLE 3.

#### "Civil Provisions of General Application.

"§ 52C-3-301. Proceedings under this Chapter.

(a) Except as otherwise provided in this Chapter, this Article applies to all proceedings under this Chapter.

(b) This Chapter provides for the following proceedings:

- (1) Establishment of an order for spousal support or child support pursuant to Article 4 of this Chapter;
- (2) Enforcement of a support order and income withholding order of another state without registration pursuant to Article 5 of this Chapter;
- (3) Registration of an order for spousal support or child support of another state or enforcement pursuant to Article 6 of this Chapter;
- (4) Modification of an order for child support or spousal support issued by a tribunal of this State pursuant to Article 2, Part 2 of this Chapter;
- (5) Registration of an order for child support of another state for modification pursuant to Article 6 of this Chapter;
- (6) Determination of paternity pursuant to Article 7 of this Chapter;  
and
- (7) Assertion of jurisdiction over nonresidents pursuant to Article 2, Part 1 of this Chapter.

(c) An individual petitioner or a support enforcement agency may commence a proceeding authorized under this Chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a

petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.

"§ 52C-3-302. Action by minor parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

"§ 52C-3-303. Application of law of this State.

Except as otherwise provided by this Chapter, a responding tribunal of this State:

- (1) Shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this State and may exercise all powers and provide all remedies available in those proceedings; and
- (2) Shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this State.

"§ 52C-3-304. Duties of initiating tribunal.

Upon the filing of a petition authorized by this Chapter, an initiating tribunal of this State shall forward three copies of the petition and its accompanying documents:

- (1) To the responding tribunal or appropriate support enforcement agency in the responding state; or
- (2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

"§ 52C-3-305. Duties and powers of responding tribunal.

(a) When a responding tribunal of this State receives a petition or comparable pleading from an initiating tribunal or directly pursuant to G.S. 52C-3-301(c) it shall cause the petition or pleading to be filed and notify the petitioner by first-class mail where and when it was filed.

(b) A responding tribunal of this State, to the extent otherwise authorized by law, may do one or more of the following:

- (1) Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;
- (2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;
- (3) Order income withholding;
- (4) Determine the amount of any arrears, and specify a method of payment;
- (5) Enforce orders by civil or criminal contempt, or both;
- (6) Set aside property for satisfaction of the support order;
- (7) Place liens and order execution on the obligor's property;
- (8) Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;
- (9) Issue an order for arrest for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and



enter the order for arrest in any local and State computer systems for criminal warrants;

(10) Order the obligor to seek appropriate employment by specified methods;

(11) Award reasonable attorneys' fees and other fees and costs; and

(12) Grant any other available remedy.

(c) A responding tribunal of this State shall include in a support order issued under this Chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this State may not condition the payment of a support order issued under this Chapter upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this State issues an order under this Chapter, the tribunal shall send a copy of the order by first-class mail to the petitioner and the respondent and to the initiating tribunal, if any.

"§ 52C-3-306. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this State, it shall forward the pleading and accompanying documents to an appropriate tribunal in this State or another state and notify the petitioner by first-class mail where and when the pleading was sent.

"§ 52C-3-307. Duties of support enforcement agency.

(a) A support enforcement agency of this State, upon request, shall provide services to a petitioner in a proceeding under this Chapter.

(b) A support enforcement agency that is providing services to the petitioner as appropriate shall:

(1) Take all steps necessary to enable an appropriate tribunal in this State or another state to obtain jurisdiction over the respondent;

(2) Request an appropriate tribunal to set a date, time, and place for a hearing;

(3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice by first-class mail to the petitioner;

(5) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication by first-class mail to the petitioner; and

(6) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) This Chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

"§ 52C-3-308. Representation of obligee.

It shall be the duty of the district attorney to represent the obligee in proceedings authorized by this Chapter unless alternative arrangements are



made by the obligee. An obligee may employ private counsel to represent the obligee in proceedings authorized by this Chapter.

"§ 52C-3-309. Duties of State information agency.

(a) The Department of Human Resources, Division of Social Services, is designated as the State information agency under this Chapter.

(b) The State information agency shall:

- (1) Compile and maintain a current list, including addresses, of the tribunals in this State which have jurisdiction under this Chapter and any support enforcement agencies in this State and transmit a copy to the state information agency of every other state;
- (2) Maintain a register of tribunals and support enforcement agencies received from other states;
- (3) Forward to the appropriate tribunal in the place in this State in which the individual obligee or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this Chapter received from an initiating tribunal or the state information agency of the initiating state; and
- (4) Obtain information concerning the location of the obligor and the obligor's property within this State not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, drivers licenses, and social security.

"§ 52C-3-310. Pleadings and accompanying documents.

(a) A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this Chapter must verify the petition. Unless otherwise ordered under G.S. 52C-3-311, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.

(b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

"§ 52C-3-311. Nondisclosure of information in exceptional circumstances.

Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this Chapter.

"§ 52C-3-312. Costs and fees.

(a) The petitioner shall not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorneys' fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorneys' fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorneys' fees if it determines that a hearing was requested primarily for delay. In a proceeding under Article 6 of this Chapter, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

"§ 52C-3-313. Limited immunity of petitioner.

(a) Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this State to participate in a proceeding under this Chapter.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this Chapter committed by a party while present in this State to participate in the proceeding.

"§ 52C-3-314. Nonparentage as defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this Chapter.

"§ 52C-3-315. Special rules of evidence and procedure.

(a) The physical presence of the petitioner in a responding tribunal of this State is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

(b) A verified petition, affidavit, document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount

of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from another state to a tribunal of this State by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this Chapter, a tribunal of this State may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this State shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communication between spouses does not apply in a proceeding under this Chapter.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this Chapter.

"§ 52C-3-316. Communications between tribunals.

A tribunal of this State may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A tribunal of this State may furnish similar information by similar means to a tribunal of another state.

"§ 52C-3-317. Assistance with discovery.

A tribunal of this State may request a tribunal of another state to assist in obtaining discovery, and upon request, may compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

"§ 52C-3-318. Receipt and disbursement of payments.

A support enforcement agency or tribunal of this State shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

#### "ARTICLE 4.

#### "Establishment of Support Order.

"§ 52C-4-401. Petition to establish support order.

(a) If a support order entitled to recognition under this Chapter has not been issued, a responding tribunal of this State may issue a support order if:

- (1) The individual seeking the order resides in another state; or
- (2) The support enforcement agency seeking the order is located in another state.

(b) The tribunal may issue a temporary child support order if:

- (1) The respondent has signed a verified statement acknowledging parentage;

- (2) The respondent has been determined by or pursuant to law to be the parent; or
- (3) There is other clear and convincing evidence that the respondent is the child's parent.
- (c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to G.S. 52C-3-305.

"ARTICLE 5.

"Direct Enforcement of Order  
of Another State Without Registration.

"§ 52C-5-501. Recognition of income-withholding order of another state.

(a) An income-withholding order issued in another state may be sent by first-class mail to the person or entity defined or identified as the obligor's employer under the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer shall:

- (1) Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State;
- (2) Immediately provide a copy of the order to the obligor; and
- (3) Distribute the funds as directed in the withholding order.

(b) An obligor may contest the validity or enforcement of an income-withholding order issued in another state in the same manner as if the order had been issued by a tribunal of this State. G.S. 52C-6-604 applies to the contest. The obligor shall give notice of the contest to any support enforcement agency providing services to the obligee and to:

- (1) The person or agency designated to receive payments in the income-withholding order; or
- (2) If no person or agency is designated, the obligee.

"§ 52C-5-502. Administrative enforcement of orders.

(a) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this State.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this Chapter.

"ARTICLE 6.

"Enforcement and Modification  
of Support Order After Registration.

"Part 1. Registration and Enforcement of Support Order.

"§ 52C-6-601. Registration or order for enforcement.



A support order or an income-withholding order issued by a tribunal of another state may be registered in this State for enforcement.

"§ 52C-6-602. Procedure to register order for enforcement.

(a) A support order or income-withholding order of another state may be registered in this State by sending the following documents and information to the tribunal for the county in which the obligor resides in this State:

- (1) A letter of transmittal to the tribunal requesting registration and enforcement;
- (2) Two copies, including one certified copy, of all orders to be registered, including any modification of an order;
- (3) A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;
- (4) The name of the obligor and, if known:
  - (i) The obligor's address and social security number;
  - (ii) The name and address of the obligor's employer and another other source of income of the obligor; and
  - (iii) A description and the location of property of the obligor in this State not exempt from execution; and
- (5) The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign order, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this State may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

"§ 52C-6-603. Effect of registration for enforcement.

(a) A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this State.

(b) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this State.

(c) Except as otherwise provided in this Article, a tribunal of this State shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

"§ 52C-6-604. Choice of law.

(a) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrears under the order.

(b) In a proceeding for arrears, the statute of limitations under the laws of this State or of the issuing state, whichever is longer, applies.

"Part 2. Contest of Validity or Enforcement.

"§ 52C-6-605. Notice of registration of order.

(a) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. Notice must be given by first-class, certified, or registered mail or by any means of personal service authorized by the law of this State. The



notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice must inform the nonregistering party:

- (1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this State;
- (2) That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after the date of mailing or personal service of the notice;
- (3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrears and precludes further contest of that order with respect to any matter that could have been asserted; and
- (4) Of the amount of any alleged arrears.

(c) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable.

"§ 52C-6-606. Procedure to contest validity or enforcement of registered order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this State shall request a hearing within 20 days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrears pursuant to G.S. 52C-6-607.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties by first-class mail of the date, time, and place of the hearing.

"§ 52C-6-607. Contest of registration or enforcement.

(a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

- (1) The issuing tribunal lacked personal jurisdiction over the contesting party;
- (2) The order was obtained by fraud;
- (3) The order has been vacated, suspended, or modified by a later order;
- (4) The issuing tribunal has stayed the order pending appeal;
- (5) There is a defense under the law of this State to the remedy sought;
- (6) Full or partial payment has been made; or
- (7) The statute of limitations under G.S. 52C-6-604 precludes enforcement of some or all of the arrears.

(b) If a party presents evidence establishing a full or partial defense under subsection (a) of this section, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this State.

(c) If the contesting party does not establish a defense under subsection (a) of this section to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

"§ 52C-6-608. Confirmed order.

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

"Part 3. Registration and Modification of Child Support Order.

"§ 52C-6-609. Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this State in the same manner provided in Part 1 of this Article if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

"§ 52C-6-610. Effect of registration for modification.

A tribunal of this State may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this State, but the registered order may be modified only if the requirements of G.S. 52C-6-611 have been met.

"§ 52C-6-611. Modification of child support order of another state.

(a) After a child support order issued in another state has been registered in this State, the responding tribunal of this State may modify that order only if, after notice and hearing, it finds that:

(1) The following requirements are met:

- (i) The child, the individual obligee, and the obligor do not reside in the issuing state;
- (ii) A petitioner who is a nonresident of this State seeks modification; and
- (iii) The respondent is subject to the personal jurisdiction of the tribunal of this State; or

(2) An individual party or the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed a written consent in the issuing tribunal providing that a tribunal of this State may modify the support order and assume continuing, exclusive jurisdiction over the order.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this State, and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this State may not modify any aspect of a child support order that may not be modified under the law of the issuing state.

(d) On issuance of an order modifying a child support order issued in another state, a tribunal of this State becomes the tribunal of continuing, exclusive jurisdiction.

(e) Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that the earlier order has been registered.

"§ 52C-6-612. Recognition of order modified in another state.

A tribunal of this State shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to a law substantially similar to this Chapter and, upon request, except as otherwise provided in this Chapter, shall:

- (1) Enforce the order that was modified only as to amounts accruing before the modification;
- (2) Enforce only nonmodifiable aspects of that order;
- (3) Provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and
- (4) Recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

"ARTICLE 7.

"Determination of Parentage.

"§ 52C-7-701. Proceeding to determine parentage.

(a) A tribunal of this State may serve as an initiating or responding tribunal in a proceeding brought under this Chapter or a law substantially similar to this Chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

(b) In a proceeding to determine parentage, a responding tribunal of this State shall apply the procedural and substantive law of this State and the rules of this State on choice of law.

"ARTICLE 8.

"Interstate Rendition.

"§ 52C-8-801. Grounds for rendition.

(a) For purposes of this Article, 'governor' includes an individual performing the functions of governor or the executive authority of a state covered by this Chapter.

(b) The Governor of this State may:

- (1) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this State with having failed to provide for the support of an obligee; or
- (2) On the demand by the governor of another state, surrender an individual found in this State who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this Chapter applies to the demand even if the individual whose surrender is

demand was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

"§ 52C-8-802. Conditions of rendition.

(a) Before making demand that the governor of another state surrender an individual charged criminally in this State with having failed to provide for the support of an obligee, the Governor of this State may require a prosecutor of this State to demonstrate that at least 60 days previously the obligee has initiated proceedings for support pursuant to this Chapter or that the proceeding would be of no avail.

(b) If, under this Chapter or a law substantially similar to this Chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the Governor of this State surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

"ARTICLE 9.

"Miscellaneous Provisions.

"§ 52C-9-901. Uniformity of application and construction.

This Chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Chapter among states enacting it.

"§ 52C-9-902. Severability clause.

If any provision of this Chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable."

(d) The Reviser of Statutes shall cause to be printed separate from this act all relevant portions of the official comments to the Uniform Interstate Family Support Act as the Reviser deems appropriate.

(e) This section is effective upon ratification.

Sec. 8. Except as otherwise provided, this act becomes effective January 1, 1996, and applies to child support owed on or after that date. Where otherwise provided, the applicability is to child support owed on or after the particular effective date specified.

In the General Assembly read three times and ratified this the 29th day of July, 1995.



H.B. 490

## CHAPTER 539

AN ACT TO ESTABLISH FEES FOR EXPEDITED FILINGS, TO PROVIDE THAT NONPROFIT CORPORATIONS ARE NOT REQUIRED TO FILE ANNUAL REPORTS, TO ALLOW THE SECRETARY OF STATE TO RETAIN FILED DOCUMENTS IN REPRODUCED FORM, TO EXTEND THE DEADLINE TO ALLOW THE REINSTATEMENT OF DISSOLVED CORPORATIONS, AND TO PREVENT THE USE OF DUPLICATE CORPORATE NAMES.

*The General Assembly of North Carolina enacts:*

## PART I. CORPORATIONS.

Section 1. Article 1 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"§ 55-1-22.1. Expedited filings.

The Secretary of State shall guarantee the expedited filing of a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:

- (1) Two hundred dollars (\$200.00) for the filing by the end of the same business day of a document received by 12:00 noon Eastern Standard Time; and
- (2) One hundred dollars (\$100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.

The Secretary of State shall not collect the fees allowed in this section unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document."

Sec. 2. G.S. 55-1-25 reads as rewritten:

"§ 55-1-25. Filing duty of Secretary of State.

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of this Chapter, the Secretary of State shall file it. Documents filed with the Secretary of State pursuant to this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of those documents reproduced.

(b) The Secretary of State files a document by stamping or otherwise endorsing 'Filed', together with ~~his~~ the Secretary's name and official title and the date and time of filing, on both the original and the document copy. After filing a document, except as provided in G.S. 55-5-03 and G.S. 55-15-09, the Secretary of State shall deliver the document copy to the domestic or foreign corporation or its representative.

(c) If the Secretary of State refuses to file a document, ~~he~~ the Secretary shall return it, by personal delivery or by first-class mail postage prepaid, to the domestic or foreign corporation or its representative within five days after the document was received, together with a brief, written statement of

the date and the reason for his refusal. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction.

(d) The Secretary of State's duty is to review and file documents that satisfy the requirements of this Chapter. ~~His~~ The Secretary of State's filing or refusing to file a document does not:

- (1) Except as provided in G.S. 55-2-03(b), affect the validity or invalidity of the document in whole or part;
- (2) Relate to the correctness or incorrectness of information contained in the document;
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect."

Sec. 3. G.S. 55-1-27 reads as rewritten:

"§ 55-1-27. *Evidentiary effect of copy of filed document.*

A certificate attached to a copy of a document filed by the Secretary of State, bearing ~~his~~ the Secretary of State's signature (which may be in facsimile) and the seal of ~~his~~ office and certifying that ~~said~~ the copy is a true copy of ~~said~~ the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed pursuant to this Chapter or any predecessor act, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original."

Sec. 4. G.S. 55-4-01(b) reads as rewritten:

"(b) Except as authorized by subsection ~~(c)~~, (c) of this section, a corporate name must be distinguishable upon the records of the Secretary of State from:

- (1) The corporate name of a corporation incorporated or authorized to transact business in this State;
- (2) A corporate name reserved or registered under G.S. 55-4-02 or G.S. 55-4-03;
- (3) The fictitious name adopted by a foreign corporation authorized to transact business in this State because its real name is unavailable; ~~and~~
- (4) The corporate name of a nonprofit corporation incorporated or authorized to transact business in this ~~State~~. State; and
- (5) The name used, reserved, or registered by a limited liability company pursuant to Chapter 57C of the General Statutes or by a limited partnership pursuant to Chapter 59 of the General Statutes."

Sec. 5. G.S. 55-4-01(g) reads as rewritten:

"(g) The name of a corporation dissolved under Article 14 may not be used by another corporation ~~until the expiration of two years after the effective date of the dissolution unless the dissolved corporation consents in writing to the use, until:~~

- (1) In the case of a voluntary dissolution, the expiration of 120 days after the effective date of the dissolution, or
- (2) In the case of an administrative dissolution, the expiration of the period within which the corporation may be reinstated pursuant to G.S. 55-14-21,

unless the dissolved corporation changes its name to a name that is distinguishable upon the records of the Secretary of State from the names of other business corporations, nonprofit corporations, limited partnerships, or limited liability companies organized or transacting business in this State."

Sec. 6. G.S. 55-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55-14-21 may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution. The application must:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution; and
- (2) State that the ground or grounds for dissolution either did not exist or have been ~~eliminated~~; eliminated.
- (3) ~~Reserved for future codification purposes; and~~
- (4) ~~Contain a certificate from the Department of Revenue reciting that all taxes owed by the corporation have been paid."~~

Sec. 7. Effective July 1, 1996, G.S. 55-14-22(a), as amended by Section 6 of this act, reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55-14-21 may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution. The application must:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution; and
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated."

## PART II. NONPROFIT CORPORATIONS.

Sec. 8. G.S. 55A-16-22 is repealed.

Sec. 9. G.S. 55A-1-21(a) reads as rewritten:

"(a) The Secretary of State may promulgate and furnish on request forms for:

- (1) An application for a certificate of existence;
- (2) A foreign corporation's application for a certificate of authority to conduct affairs in this State;
- (3) A foreign corporation's application for a certificate of withdrawal; and
- (4) ~~The annual report.~~ Designation of Principal Office Address; and
- (5) Corporation's Statement of Change of Principal Office.

If the Secretary of State so requires, use of these forms is mandatory."

Sec. 10. G.S. 55A-1-22 reads as rewritten:

"§ 55A-1-22. *Filing, service, and copying fees.*

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

Document	Fee
(1) Articles of incorporation	\$50.00

(2)	Application for reserved name	\$10.00
(3)	Notice of transfer of reserved name	\$10.00
(4)	Application for registered name	\$10.00
(5)	Application for renewal of registered name	\$10.00
(6)	Corporation's statement of change of registered agent or registered office or both	\$ 5.00
(7)	Agent's statement of change of registered office for each affected corporation	\$ 5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	\$ 5.00
(10)	Amendment of articles of incorporation	\$25.00
(11)	Restated articles of incorporation without amendment of articles	\$10.00
(12)	Restated articles of incorporation with amendment of articles	\$25.00
(13)	Articles of merger	\$25.00
(14)	Articles of dissolution	\$15.00
(15)	Articles of revocation of dissolution	\$10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Application for reinstatement following administrative dissolution	\$25.00
(18)	Certificate of reinstatement	No fee
(19)	Certificate of judicial dissolution	No fee
(20)	Application for certificate of authority	\$100.00
(21)	Application for amended certificate of authority	\$25.00
(22)	Application for certificate of withdrawal	\$10.00
(23)	Certificate of revocation of authority to conduct affairs	No fee
(24)	<del>Annual Report</del> Corporation's Statement of Change of Principal Office	<del>\$10.00</del> \$5.00
(24a)	<u>Designation of Principal Office Address</u>	\$5.00
(25)	Articles of correction	\$10.00
(26)	Application for certificate of existence or authorization	\$ 5.00
(27)	Any other document required or permitted to be filed by this Chapter	\$10.00.

(b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time process is served on the Secretary under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.



(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

- (1) One dollar (\$1.00) a page for copying or comparing a copy to the original; and
- (2) Five dollars (\$5.00) for the certificate."

Sec. 11. Article 1 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"§ 55A-1-22.1. Expedited filings.

The Secretary of State shall guarantee the expedited filing of a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:

- (1) Two hundred dollars (\$200.00) for the filing by the end of the same business day of a document received by 12:00 noon Eastern Standard Time; and
- (2) One hundred dollars (\$100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.

The Secretary of State shall not collect the fees allowed in this section unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document."

Sec. 12. G.S. 55A-1-25 reads as rewritten:

"§ 55A-1-25. Filing duty of Secretary of State.

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of this Chapter, the Secretary of State shall file it. Documents filed with the Secretary of State pursuant to this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of those documents reproduced.

(b) The Secretary of State files a document by stamping or otherwise endorsing 'Filed', together with the Secretary of State's name and official title and the date and time of filing, on both the original and the exact or conformed copy. After filing a document, except as provided in G.S. 55A-5-03 and G.S. 55A-15-09, the Secretary of State shall deliver the exact or conformed copy to the domestic or foreign corporation or its representative.

(c) If the Secretary of State refuses to file a document, the Secretary of State shall return it, by personal delivery or by first-class mail postage prepaid, to the domestic or foreign corporation or its representative within five days after the document was received, together with a brief, written statement of the date of and the reason for refusal. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction.

(d) The Secretary of State's duty is to review and file documents that satisfy the requirements of this Chapter. The Secretary of State's filing or refusing to file a document does not:

- (1) Except as provided in G.S. 55A-2-03(b), affect the validity or invalidity of the document in whole or part;
- (2) Determine the correctness or incorrectness of information contained in the document;
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect."

**Sec. 13.** G.S. 55A-1-27 reads as rewritten:

"§ 55A-1-27. *Evidentiary effect of certificate of filing.*

A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature (which may be in facsimile) and the seal of his office and certifying that the copy is a true copy of the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed pursuant to this Chapter or any predecessor act, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original."

**Sec. 14.** G.S. 55A-1-28(b)(4) is repealed.

**Sec. 15.** G.S. 55A-1-40(20) reads as rewritten:

- "(20) 'Principal office' means the office (in or out of this State) so designated in the annual report filed pursuant to G.S. 55A-16-22 articles of incorporation, the Designation of Principal Office Address form, or in any subsequent Corporation's Statement of Change of Principal Office Address form filed with the Secretary of State where the principal offices of a domestic or foreign corporation are located."

**Sec. 16.** G.S. 55A-1-41(d) reads as rewritten:

"(d) Written notice to a domestic or foreign corporation (authorized to conduct affairs in this State) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report on file in the office of the Secretary of State or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority, articles of incorporation, the Designation of Principal Office Address form, or any Corporation's Statement of Change of Principal Office Address form filed with the Secretary of State."

**Sec. 17.** G.S. 55A-2-02(a) reads as rewritten:

"(a) The articles of incorporation shall set forth:

- (1) A corporate name for the corporation that satisfies the requirements of G.S. 55A-4-01;
- (2) If the corporation is a charitable or religious corporation, a statement to that effect if it was incorporated on or after the effective date of this Chapter;
- (3) The street address, and the mailing address if different from the street address, of the corporation's initial registered office, the

- county in which the initial registered office is located, and the name of the corporation's initial registered agent at that address;
- (4) The name and address of each incorporator;
  - (5) Whether or not the corporation will have members; and
  - (6) Provisions not inconsistent with law regarding the distribution of assets on ~~dissolution~~, dissolution; and
  - (7) The street address, and the mailing address, if different from the street address, of the principal office, and the county in which the principal office is located."

Sec. 18. G.S. 55A-4-01(b) reads as rewritten:

"(b) Except as authorized by subsection (c) of this section, a corporate name shall be distinguishable upon the records of the Secretary of State from:

- (1) The corporate name of a domestic nonprofit corporation or a foreign nonprofit corporation authorized to conduct affairs in this State;
- (2) The corporate name of a business corporation incorporated or authorized to transact business in this State;
- (3) A corporate name reserved or registered under G.S. 55A-4-02, 55A-4-03, 55-4-02, or 55-4-03; or
- (4) The fictitious name adopted by a foreign business or nonprofit corporation authorized to transact business or conduct affairs in this State because its real name is ~~unavailable~~, unavailable; or
- (5) The name used, reserved, or registered by a limited liability company pursuant to Chapter 57C of the General Statutes or by a limited partnership pursuant to Chapter 59 of the General Statutes."

Sec. 19. G.S. 55A-4-01(f) reads as rewritten:

"(f) The name of a corporation dissolved under Article 14 of this Chapter shall not be used by another corporation ~~until the expiration of two years after the effective date of the dissolution unless the dissolved corporation consents in writing to the use, until:~~

- (1) In the case of a voluntary dissolution, the expiration of 120 days after the effective date of the dissolution, or
- (2) In the case of an administrative dissolution, the expiration of the period within which the corporation may be reinstated pursuant to G.S. 55A-14-22,

unless the dissolved corporation changes its name to a name that is distinguishable upon the records of the Secretary of State from the names of other nonprofit corporations, business corporations, limited partnerships, or limited liability companies organized or transacting business in this State."

Sec. 20. G.S. 55A-5-02(c) is repealed.

Sec. 21. Article 5 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"§ 55A-5-02.1. Principal office address.

(a) Any corporation that does not designate the street address and the mailing address, if different from the street address, of the corporation's principal office and the county of location in an annual report or its articles

of incorporation shall file a Designation of Principal Office Address form with the Secretary of State that contains that information.

(b) A corporation may change its principal office by delivering to the Secretary of State for filing a Corporation's Statement of Change of Principal Office form that sets forth:

- (1) The street address, and the mailing address if different from the street address, of the corporation's current principal office and the county in which it is located; and
- (2) The street address, and the mailing address if different from the street address, of the new principal office and the county in which it is located."

Sec. 22. G.S. 55A-5-03(b) reads as rewritten:

"(b) After filing the statement the Secretary of State shall mail one copy to the registered office (if not discontinued) and the other copy to the corporation at its principal office ~~as shown in its most recent annual report~~ office."

Sec. 23. G.S. 55A-5-04(b) reads as rewritten:

"(b) When a corporation fails to appoint or maintain a registered agent in this State, or when its registered agent cannot with due diligence be found at the registered office, the Secretary of State shall be an agent of the corporation upon whom any process, notice, or demand may be served. Service on the Secretary of State of any process, notice, or demand shall be made by delivering to and leaving with the Secretary of State or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice, or demand. In the event any process, notice, or demand is served on the Secretary of State, he shall immediately mail one of the copies thereof, by registered or certified mail, return receipt requested, to the corporation at its principal office shown in its most recent ~~annual report~~ annual report, if applicable, the articles of incorporation, the Designation of Principal Office Address form, in any subsequent Corporation's Statement of Change of Principal Office Address form, or in any subsequent communication received from the corporation stating the current mailing address of its principal office or, if there is no mailing address for the principal office on file, to the corporation at its registered office. Service on a corporation under this subsection shall be effective for all purposes from and after the date of such service on the Secretary of State."

Sec. 24. G.S. 55A-14-20(2) is repealed.

Sec. 25. Effective July 1, 1996, G.S. 55A-14-20, as amended by Section 24 of this act, reads as rewritten:

"§ 55A-14-20. *Grounds for administrative dissolution.*

The Secretary of State may commence a proceeding under G.S. 55A-14-21 to dissolve administratively a corporation if:

- (1) The corporation does not pay within 60 days after they are due any penalties, fees, or other payments due under this Chapter;
- (2) Repealed.
- (3) The corporation is without a registered agent or registered office in this State for 60 days or more;



- (4) The corporation does not notify the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;
- (5) The corporation's period of duration stated in its articles of incorporation expires; ~~or~~
- (6) The corporation knowingly fails or refuses to answer truthfully and fully within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this ~~Chapter~~, Chapter; or
- (7) The corporation does not designate the address of its principal office with the Secretary of State or does not notify the Secretary of State within 60 days that the principal office has changed."

Sec. 26. G.S. 55A-15-09(b) reads as rewritten:

"(b) After filing the statement, the Secretary of State shall mail one copy to the registered office (if not discontinued) and the other copy to the foreign corporation at its principal ~~office shown in its most recent annual report~~ office."

Sec. 27. G.S. 55A-15-10(b) reads as rewritten:

"(b) When a foreign corporation authorized to conduct affairs in this State fails to appoint or maintain a registered agent in this State, or when its registered agent cannot with due diligence be found at the registered office, or when its certificate of authority shall have been revoked under G.S. 55A-15-31, the Secretary of State shall be an agent of such corporation upon whom any process, notice, or demand may be served. Service on the Secretary of State of any process, notice, or demand shall be made by delivering to and leaving with the Secretary of State or with any clerk having charge of the corporation department of the Secretary of State's office, duplicate copies of such process, notice, or demand. In the event any process, notice, or demand is served on the Secretary of State, he shall immediately mail one of the copies thereof, by registered or certified mail, return receipt requested, to the corporation at its principal office shown in its most recent annual ~~report~~ report, if applicable, the articles of incorporation, the Designation of Principal Office Address form, in any subsequent Corporation's Statement of Change of Principal Office Address form, or in any subsequent communication received from the corporation stating the current mailing address of its principal office or, if there is no mailing address for the principal office on file, to the corporation at its registered office. Service on a foreign corporation under this subsection shall be effective for all purposes from and after the date of such service on the Secretary of State."

Sec. 28. G.S. 55A-15-30(a)(1) is repealed.

Sec. 29. G.S. 55A-16-01(e)(7) is repealed.

### PART III. LIMITED LIABILITY COMPANIES.

Sec. 30. Article 1 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"§ 57C-1-22.1. Expedited filings.

The Secretary of State shall guarantee the expedited filing of a document upon receipt of the document in proper form and the payment of the

required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:

- (1) Two hundred dollars (\$200.00) for the filing by the end of the same business day of a document received by 12:00 noon Eastern Standard Time; and
- (2) One hundred dollars (\$100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.

The Secretary of State shall not collect the fees allowed in this section unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document."

**Sec. 31.** G.S. 57C-1-25 reads as rewritten:

*"§ 57C-1-25. Filing duty of Secretary of State.*

(a) If a document delivered to the Office of the Secretary of State for filing satisfies the requirements of this Chapter, the Secretary of State shall file it. Documents filed with the Secretary of State pursuant to this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of those documents reproduced.

(b) The Secretary of State files a document by stamping or otherwise endorsing 'Filed', together with ~~his~~ the Secretary of State's name and official title and the date and time of filing, on both the original and the document copy. After filing a document, the Secretary of State shall deliver the document copy to the domestic or foreign limited liability company or its representative.

(c) If the Secretary of State refuses to file a document, the Secretary of State shall return it to the domestic or foreign limited liability company or its representative within five days after the document was received, together with a brief, written explanation of the reason for ~~his~~ refusal. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction.

(d) The Secretary of State's duty is to review and file documents that satisfy the requirements of this Chapter. The Secretary of State's filing or refusing to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or part;
- (2) Relate to the correctness or incorrectness of information contained in the document; or
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect."

**Sec. 32.** G.S. 57C-1-27 reads as rewritten:

*"§ 57C-1-27. Evidentiary effect of copy of filed document.*

A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature (which may be in facsimile)

and the seal of office and certifying that said the copy is a true copy of said the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed pursuant to this Chapter or any predecessor act, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original."

Sec. 33. G.S. 57C-2-30(f) reads as rewritten:

"(f) The name of a limited liability company dissolved under G.S. 57C-6-03 may not be used by another limited liability company until the expiration of two years after the effective date of the articles of dissolution unless the dissolved limited liability company consents in writing to the use, changes its name to a name distinguishable upon the records of the Secretary of State from the names of other limited liability companies, business corporations, nonprofit corporations, or limited partnerships organized or transacting business in this State."

#### PART IV. LIMITED PARTNERSHIPS.

Sec. 34. G.S. 59-103(d) reads as rewritten:

"(d) The limited partnership name shall be sufficiently unique to permit separate indexing in the limited partnership records in the Office of the Secretary of State. Filing of name does not confer any right to the use of the name in commerce, shall be distinguishable upon the records of the Secretary of State from:

- (1) The name of a corporation, nonprofit corporation, limited partnership, or limited liability company organized in this State, or a foreign corporation or nonprofit corporation, foreign limited partnership, or foreign limited liability company authorized to transact business in this State;
- (2) A name reserved under G.S. 55-4-02, 55-4-03, 55A-4-02, 55A-4-03, 57C-2-31, 57C-2-32, 59-104, or 59-904; and
- (3) The fictitious name adopted by a foreign corporation or nonprofit corporation, foreign limited partnership, or foreign limited liability company authorized to transact business in this State because its real name is unavailable."

Sec. 35. G.S. 59-206 reads as rewritten:

"§ 59-206. *Filing requirements.*

(a) Whenever the provisions of this Article require any document relating to a limited partnership to be executed and filed in accordance with this Article, unless otherwise specifically stated in this Article:

- (1) There shall be an original executed document and also one conformed copy.
- (2) The original document so signed, together with the conformed copy, shall be delivered to the Secretary of State. Unless he the Secretary finds that it does not conform to law, the Secretary of State shall, when the proper fees have been tendered, endorse upon the original the word 'filed' and the hour, day, month and year of the filing thereof and shall file the same in his the Secretary's office. The Secretary of State shall thereupon immediately compare the copy with the original and if he the

Secretary finds that they are identical ~~he~~ the Secretary shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in ~~his~~ the Secretary's office and showing the date of ~~such~~ the filing. ~~He~~ The Secretary shall thereupon return the copy so certified to the limited partnership or its representatives. Any documents filed with the Secretary of State pursuant to this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of the documents reproduced. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction.

(3) Repealed by Session Laws 1991, c. 153, s. 2.

(3a) Whenever the name of any domestic or foreign limited partnership holding title to real property in this State is changed upon amendment to the certificate of limited partnership, a certificate reciting ~~such~~ the change or transfer shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(4) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign limited partnership, a similar certificate by any competent authority of the jurisdiction under which the limited partnership is organized may be registered in accordance with this section.

(5) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the limited partnership holding title to the real property before the amendment shall appear in the 'Grantor' index, and the amended name of the limited partnership holding title to the real property by virtue of the amendment shall appear in the 'Grantee' index.

(b) Repealed by Session Laws 1991, c. 153, s. 2.

(b1) Except as provided in subsection (b2), a document accepted for filing is effective:



- (1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or
  - (2) At the time specified in the document as its effective time on the date it is filed.
- (b2) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but not time is specified, the document is effective at 11:59:59 p.m. on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.
- (b3) The fact that a document has become effective under this section does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.
- (c) It shall be the duty of the Secretary of State, whenever so requested and upon tender of the proper fees, to certify as aforesaid any true copy of any such document on file in his the office, or if ~~such be the request~~, requested, to make or cause to be made typewritten or photostatic copies of ~~such~~ the documents and to certify the same as aforesaid."

Sec. 36. Article 5 of Chapter 59 of the General Statutes is amended by adding a new section to read:

"§ 59-206.1. Evidentiary effect of copy of filed document.

A photographic, microfilm, optical disk media, or other reproduced copy of a document filed pursuant to this Chapter or any predecessor act, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original."

Sec. 37. G.S. 59-1106 reads as rewritten:

"§ 59-1106. Fees.

The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1) For filing a certificate of limited partnership (G.S. 59-201) .....	\$50.00
(2) For filing a certificate of amendment (G.S. 59-202; 59-905) .....	25.00
(3) For filing a certificate of cancellation (G.S. 59-203; 59-906) .....	25.00
(4) For filing an application for reservation of name (G.S. 59-104(a)) .....	10.00
(5) For filing a transfer of name (G.S. 59-104(d)) .....	10.00
(6) For filing an application for registration as foreign limited partnership (G.S. 59-502) .....	50.00
(7) For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a limited partnership (G.S. 59-206(c))	
For each page .....	1.00
For affixing his certificate and official seal thereto .....	5.00

- (8) For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a limited partnership  
For each page..... 1.00
- (9) For filing any other document not herein specifically provided for..... ~~10.00~~, 10.00
- (10) For the expedited filing by the end of the same business day of a document received in good order by 12:00 noon Eastern Standard Time ..... 200.00  
additional fee
- (11) For the expedited filing of a document received in good order within 24 hours after receipt, excluding weekends and holidays..... 100.00  
additional fee.

The Secretary of State shall not collect the fees allowed in subdivisions (10) and (11) of this section unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document. Upon receipt of a document in proper form and payment of the required filing fee, the Secretary of State shall guarantee the expedited filing of the document."

#### PART V. EFFECTIVE DATES.

**Sec. 38.** (a) Sections 3, 13, 32, and 36 of this act become effective October 1, 1995.

(b) Section 7 of this act becomes effective July 1, 1996, and applies to applications for reinstatement on or after that date. Section 25 of this act becomes effective July 1, 1996, and applies to proceedings commenced on or after that date.

(c) Sections 1, 11, 30, and 37 of this act apply to expedited filings submitted on or after the date of ratification. Sections 4, 5, 33, and 34 of this act apply to names filed, reserved, or registered on or after the date of ratification. Section 6 of this act applies to applications for reinstatement on or after the date of ratification. Section 17 of this act applies to articles of incorporation filed on or after the date of ratification. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

H.B. 706

#### CHAPTER 540

AN ACT AUTHORIZING COLUMBUS COUNTY TO LEVY A ROOM OCCUPANCY TAX SUBJECT TO APPROVAL BY THE VOTERS, MODIFYING THE METHOD OF APPOINTMENT OF MEMBERS AND OFFICERS TO CERTAIN LOCAL TOURISM DEVELOPMENT BOARDS, AND MODIFYING THE ALLOCATION OF THE PROCEEDS OF THE NEW HANOVER OCCUPANCY TAX.

*The General Assembly of North Carolina enacts:*

PART I.  
AUTHORIZATION FOR COLUMBUS COUNTY  
ROOM OCCUPANCY TAX

**Section 1. Occupancy Tax.** (a) *Authorization and scope.* The Columbus County Board of Commissioners may direct the county board of elections to conduct an advisory referendum on the question of whether a three percent (3%) room occupancy tax shall be levied in the county. The election shall be held on a date jointly agreed upon by the two boards and shall be held in accordance with the procedures of G.S. 163-287. The form of the question to be presented in a special election concerning the levy of the room occupancy tax shall be:

"[ ] FOR [ ] AGAINST

Levy of a three percent (3%) county room occupancy tax."

If the majority of those voting in a referendum held pursuant to this section vote for the levy of the tax, the Columbus County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) *Collection.* Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for State sales and use tax.

(c) *Administration.* The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(d) *Penalties.* A person, firm, corporation, or association who fails or refuses to file the return or pay the tax required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Columbus County Board of Commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(e) *Distribution and use of tax revenue.* Columbus County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Columbus County Tourism Board. The Board shall use the funds remitted to it under this subsection to promote travel and tourism in Columbus County and for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the gross proceeds.
- (2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. -- Expenditures that are designed to increase the use of lodging facilities in a county or to attract tourists or business travelers to the county. The term includes expenditures to construct, maintain, operate, or market a convention or meeting facility, a visitors' center, or a coliseum and other expenditures that, in the judgment of the Authority, will facilitate and promote tourism.

(f) *Effective date of levy.* A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) *Repeal.* A tax levied under this section may be repealed by a resolution adopted by the Columbus County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

**Sec. 2. Tourism Board.** (a) *Appointment.* When the board of commissioners adopts a resolution levying a room occupancy tax under this act, if it has not already created a county Tourism Board under Chapter 706 of the 1993 Session Laws, it shall adopt a resolution creating that Board, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Board including the members' qualifications and terms of office, and for the



filling of vacancies on the Board. The board of commissioners may designate one member of the Board as chair and shall determine the compensation, if any, to be paid to members of the Board.

The Board shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Columbus County shall be the ex officio finance officer of the Board.

(b) *Duties.* The Board shall expend the net proceeds of the tax levied under this act for the purposes provided in this Part. The Board shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) *Reports.* The Board shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

**Sec. 3.** This Part is repealed effective July 28, 1995, if the 1995 General Assembly, 1995 Regular Session, enacts Senate Bill 364 authorizing Columbus County to levy a room occupancy tax.

## PART II.

### HAYWOOD COUNTY TOURISM DEVELOPMENT AUTHORITY

**Sec. 4.** Section 15 of Chapter 908 of the 1983 Session Laws reads as rewritten:

"Sec. 15. Appointments, Duties of Tourism Development Authority. (a) When the Haywood County Board of Commissioners adopts a resolution levying a room occupancy tax pursuant to this Part, it shall also adopt a resolution creating a County Tourism Development Authority composed of nine voting members appointed as follows:

- (1) ~~three tourist-oriented business members appointed by the Board of Directors of the Maggie Valley Chamber of Commerce; Three members who own or operate hotels, motels, or other accommodations with more than 20 rental units.~~
- (2) ~~three tourist-oriented business members appointed by the Board of Directors of the Haywood County Chamber of Commerce; and Three members who own or operate hotels, motels, or other accommodations with 20 or fewer rental units.~~
- (3) ~~three Three tourist-oriented business members at large appointed by the Haywood County Board of Commissioners. Each Chamber's Board of Directors and the large.~~

All members of the Authority shall be appointed by the Haywood County Board of Commissioners. The Board of County Commissioners shall designate ~~one~~ three of its initial appointees to serve a one-year term, ~~one~~ three to serve a two-year term, and ~~one~~ three to serve a three-year term. Thereafter, all members shall serve three-year terms. Vacancies shall be filled by the appointing authority of the member who ~~created the vacancy.~~ Board of Commissioners subject to the qualifications established above for the vacating member. Members appointed to fill vacancies shall serve the remainder of the unexpired term for which they are appointed to fill.

(b) The members of the Tourism Development Authority shall elect from its membership a ~~chairman, chair~~. The Authority shall meet at the call of the ~~chairman chair~~ and shall adopt rules of procedure to govern its meetings. The finance officer of Haywood County shall serve ex officio as accountant for the Authority.

(c) The Tourism Development Authority shall report quarterly and at the close of the fiscal year to the ~~board of county commissioners~~ Board of Commissioners on its receipts and disbursements for the preceding quarter and for the year in such detail as the Board may require."

### PART III.

#### NEW HANOVER OCCUPANCY TAX USE

**Sec. 5.** Section 35 of Chapter 908 of the 1983 Session Laws, as amended by Chapter 987 of the 1983 Session Laws and Chapter 971 of the 1985 Session Laws, reads as rewritten:

"Sec. 35. Disposition of Taxes Collected. (a) New Hanover County shall distribute the net proceeds of the occupancy tax as follows:

- (1) ~~Seventy-five percent (75%)~~ Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30; and
- (2) ~~Twenty-five percent (25%)~~ Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the county and its municipalities in accordance with the method by which the one percent (1%) local sales and use taxes levied in the county pursuant to Article 39 of Chapter 105 of the General Statutes are distributed.

'Net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax.

Unless a change in the use of occupancy tax revenue is authorized pursuant to subsection (b), the revenue deposited in a special fund in accordance with subdivision (1) shall be used by the county to control beach erosion, and the revenue distributed between the county and its municipalities in accordance with subdivision (2) shall be used to promote travel and tourism. No revenue distributed under subdivision (2), however, may be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.

(b) The purposes for which revenue from the room occupancy tax may be used by the county and its municipalities may be changed only by resolution of the New Hanover Board of County Commissioners after being approved by a majority of the votes cast in an election held in New Hanover County on the question of how revenue from the room occupancy tax should be used. The ballot presented to the qualified voters of the county in an election concerning the use of revenue from the room occupancy tax shall state all the proposed uses of this revenue and the percentage of the revenue to be used for each purpose. Any change in use of revenue from the room occupancy tax made by the county commissioners after voter approval may likewise be changed only by resolution of the county commissioners after being approved by the voters in another election.

The question of how revenue from the room occupancy tax should be spent may be submitted to the qualified voters of the county only in at the time of a statewide general election. All elections under this section shall be conducted in accordance with the laws then governing elections in this State."

## PART IV.

## GREENSBORO/HIGH POINT TOURISM DEVELOPMENT OFFICERS

Sec. 6. Section 7(b) of Chapter 988 of the 1983 Session Laws (Reg. Sess. 1984), as amended by Chapter 39 of the 1989 Session Laws, reads as rewritten:

"(b) All members of the Authority shall serve without compensation. Vacancies in the Authority shall be filled by the appointing authority of the member creating the vacancy. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms, except the initial members of the following designations, who shall serve the following terms:

- (1) Members appointed pursuant to subdivisions (a)(1) and (a)(2) above shall serve a one-year term;
- (2) Of the members appointed pursuant to subdivision (a)(3) above, the appointee of the Greensboro City Council who owns or operates accommodations with more than 200 rental units shall serve a three-year term; the appointee of the Greensboro City Council who owns or operates accommodations with no meeting facilities shall serve an initial term which expires September 30, 1989; and one appointee of the board of commissioners shall serve a three-year term and one a two-year term, as designated by the board of county commissioners;
- (3) The member appointed pursuant to subdivision (a)(4) above shall serve a three-year term;
- (4) The member appointed pursuant to subdivision (a)(5) above shall serve a two-year term; and
- (5) The member appointed pursuant to subdivision (a)(6) shall serve an initial term which expires September 30, 1991.

Members may serve no more than two consecutive three-year terms. The members shall elect a chairman, chair, who shall serve for a term of two years. A member of the Authority who is a member of the Guilford County Board of Commissioners or the Greensboro City Council may not serve as the chair or as any other officer of the Authority or as the chair or as any other officer of a committee of the Authority. The Authority shall meet at the call of the chairman chair and shall adopt rules of procedure to govern its meetings. The finance officer for Guilford County shall be the ex officio finance officer of the Authority."

Sec. 7. Section 7.1 of Chapter 988 of the 1983 Session Laws (Reg. Sess. 1984), as amended by Chapter 39 of the 1989 Session Laws, is amended by designating the language in that section as subsection (a) and adding a new subsection to read:

"(b) A member of the High Point Convention and Visitors Board who is a member of the Guilford County Board of Commissioners or the High Point

City Council may not serve as the chair or as any other officer of the Board or as the chair or as any other officer of a committee of the Board."

## PART V.

## EFFECTIVE DATE

**Sec. 8.** Section 5 of this act is effective upon ratification and applies to taxes levied on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 966

## CHAPTER 541

**AN ACT TO INCREASE THE COSMETOLOGY EXAMINATION AND LICENSURE FEES, TO ALLOW THE BOARD TO ADMINISTER EXAMINATIONS FOR LICENSURE OF TEACHERS, AND TO CHARGE A FEE FOR THE EXAMINATION OF TEACHERS.**

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 88-21 reads as rewritten:

"§ 88-21. *Fees required.*

(a) The following fees shall be paid to the Board:

- (1) The fee to be paid by an applicant for a certificate of registration to practice cosmetic art as an apprentice ~~shall be~~ is five dollars (\$5.00).
- (2) The fee to be paid by an applicant for an examination to determine ~~his or her~~ the applicant's fitness to receive a certificate of registration as a registered cosmetologist ~~shall be ten dollars (\$10.00),~~ is twenty dollars (\$20.00).
- (3) The fee to be paid by an applicant for an examination to determine ~~his or her~~ the applicant's fitness to receive a certificate of registration as a registered manicurist ~~shall be five dollars (\$5.00),~~ is fifteen dollars (\$15.00).
- (4) The license fee for a registered cosmetologist ~~shall be thirty-three dollars (\$33.00)~~ shall be in an amount determined by the Board but not to exceed thirty-nine dollars (\$39.00) for three years, payable in advance.
- (5) The fee for renewal of the license of a registered cosmetologist ~~shall be thirty-three dollars (\$33.00)~~ shall be in an amount determined by the Board but not to exceed thirty-nine dollars (\$39.00) for three years, payable in advance, if the license is renewed before it becomes delinquent. The licenses of all registered cosmetologists ~~shall be~~ are due for renewal in October 1986, and every three years thereafter.
- (6) A delinquency penalty of ten dollars (\$10.00) shall be paid, in addition to the renewal fee, for the renewal of a registered cosmetologist's license that has become delinquent.
- (7) The annual fee for a registered apprentice ~~or~~ cosmetologist and a certified manicurist, which shall be due on or before October 1, ~~shall be five dollars (\$5.00),~~ is ten dollars (\$10.00).



- (8) All cosmetic art shops shall pay an annual fee of three dollars (\$3.00) for each active booth, on or before February 1 of each year.
- (9) A delinquency penalty of ten dollars (\$10.00) shall be paid by each cosmetic art shop that does not pay the required fees by the February 1 deadline.
- (10) The fee for reissuance of an expired permit of a cosmetic art shop ~~shall be~~ is twenty-five dollars (\$25.00).
- (11) All cosmetic art schools shall pay a fee of fifty dollars (\$50.00) annually.
- (12) Applicants for licensing under G.S. 88-19 shall pay an application fee of fifteen dollars (\$15.00).
- (13) Registered cosmetologists licensed under G.S. 88-19 shall pay an annual license fee of ~~eleven dollars (\$11.00)~~ one-third the amount set under subdivision (4) of this subsection, rounded up to the nearest whole dollar, until the year in which all other registered cosmetologist licenses are due for renewal and then shall pay the fees required in subdivision (5) above.
- (14) A delinquency penalty of three dollars (\$3.00) shall be paid by all registered cosmetologists licensed under G.S. 88-19, paying on an annual basis if they do not renew their license before October 1 of that year.
- (15) Apprentice cosmetologists, licensed under G.S. 88-19, shall pay an annual license fee of ~~five dollars (\$5.00)~~ ten dollars (\$10.00) for the first year, or part of the year, in addition to the application fee required by subdivision (12) above.
- (16) All cosmetic art teachers shall be licensed by the Board and shall pay a fee of ten dollars (\$10.00) for that license which shall be renewed every two years.
- (17) The fee to be paid by an applicant for an examination to determine the applicant's fitness to receive a license to teach cosmetic art is twenty-five dollars (\$25.00).

(b) The Board shall not increase ~~the fees~~ a fee above the amount set or authorized in subsection (a) of this section, but the Board may regulate the payment of the fees and may prorate the fees as appropriate."

Sec. 2. G.S. 88-17 reads as rewritten:

"§ 88-17. *Regular and special meetings of Board; examinations.*

The Board of Cosmetic Art Examiners shall meet four times a year in the months of January, April, July and October on the first Tuesday in each of said months, for the purpose of transacting all business of the Board of Cosmetic Art Examiners and to conduct examinations of applicants for licensure to teach cosmetic art, of applicants for certificates of registration to practice as registered cosmetologists, and of applicants for certificates of registration to practice as registered apprentices, meetings to be held at such places as the Board may determine to be most convenient for such examinations; provided, however, that examinations are conducted at no less than three locations other than Raleigh, scattered geographically throughout the State of North Carolina. The locations for examinations conducted outside of Raleigh shall be in publicly supported two-year post-secondary

educational institutions with appropriate facilities. The Board shall, if requested by an institution, reimburse the institution for the use of its facilities in administering examinations. The examinations conducted for applicants for certificates of registration as registered cosmetologists and registered apprentices shall be open to all applicants, include such practical demonstration and oral and written tests as the Board may determine, and be administered by teachers or instructors, other than Board members, qualified and approved by the Board. The Board shall, upon request, reimburse a teacher or instructor who administers an examination. The chairman of the Board is hereby authorized and empowered to call a meeting of said Board whenever necessary, said meetings to be in addition to the quarterly meetings hereinbefore provided for. No payment for per diem or travel expenses shall be authorized or paid for Board meetings other than those called by the chairman of the Board. No payment for expenses incurred in the administration of examinations of applicants for certificates of registration as registered cosmetologists or registered apprentices at post-secondary educational institutions shall be authorized other than the cost of examination materials, rental of the examination facility, grading of the examination, and reimbursement of teachers or instructors who administer the examinations."

**Sec. 2.1.** The State Auditor is requested to conduct a performance audit of the State Board of Cosmetic Art Examiners. If the State Auditor conducts the audit, the Auditor shall report the findings to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the General Assembly.

**Sec. 3.** This act becomes effective September 1, 1995, and applies to applications filed and licenses, permits, and certificates issued on or after that date.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

H.B. 898

## CHAPTER 542

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, TO MAKE VARIOUS STATUTORY CHANGES, AND TO MAKE TECHNICAL CORRECTIONS TO CHAPTER 507 OF THE 1995 SESSION LAWS.

*The General Assembly of North Carolina enacts:*

## PART I.-----TITLE

**Section 1.** This act shall be known as "The Studies Act of 1995".

## PART II.-----LEGISLATIVE RESEARCH COMMISSION

**Sec. 2.1.** The Legislative Research Commission may study the topics listed below. When applicable, the 1995 bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. The

Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

- (1) Atlantic States Marine Fisheries Compact withdrawal (H.B. 948 - Preston)
- (2) Bad check fees (S.B. 876 - Ballance)
- (3) Chiropractic care (S.J.R. 228 - Odom, Soles)
- (4) Consolidation of regulatory agencies of financial institutions (H.B. 839 - Tallent)
- (5) Consumer protection issues:
  - a. Consumer protection (S.B. 59 - Jordan; H.B. 196 - Thompson)
  - b. Rental property rights (S.B. 861 - Perdue)
- (6) Domiciliary care and nursing homes (H.B. 685, H.B. 745 - Clary)
- (7) Education issues:
  - a. Education improvement (State grants and loans for community college tuition and fees, H.B. 42 - Warner)
  - b. School building disposition (S.B. 60 - Jordan, Edwards; H.B. 78 - Wainwright)
  - c. School funding (S.B. 1088 - Winner, Plexico)
  - d. Ability grouping and tracking of students (S.B. 1004 - Martin, W.; H.B. 1051 - Cunningham)
  - e. Teacher tenure, performance evaluation, and incentives (H.B. 210 - Arnold)
  - f. Choice in education (Shubert, Linney, Miller, K., Wood), including tuition tax credits (H.B. 954 - Wood)
- (8) Election laws reform (S.B. 982 - Plexico; H.B. 922 - Cansler; H.B. 858 - Miner)
- (9) Emergency medical services (S.J.R. 1045 - Speed)
- (10) Energy conservation (S.J.R. 461 - Edwards; H.J.R. 275 - Brawley)
- (11) Grandparent visitation rights (S.B. 841 - Forrester, Kerr, and Carpenter; H.J.R. 872 - Mitchell)
- (12) Illegitimacy, its prevention, and related child support and welfare benefits issues (Basnight)
- (13) Insurance and insurance-related issues:
  - a. Coastal insurance availability and affordability (S.J.R. 881 - Soles, Parnell)
  - b. Long-term care insurance (S.B. 102 - Parnell; H.B. 98 - Edwards)
  - c. Statewide flexible benefits program and third-party administrator contracts (Executive Order 66)
- (14) Juvenile and family law (S.J.R. 381 - Cooper, Allran, Winner; H.J.R. 251 - Hensley, Rogers, Russell; H.J.R. 274 - Hackney)
- (15) Lien laws (S.B. 434 - Hartsell, Soles, and Cooper)
- (16) Mold Lien Act (H.B. 617 - McMahan)
- (17) Occupational and professional regulation:
  - a. Fire Alarm Installers (Capps)

- b. Forester licensing (Weatherly)
  - c. Qualified environmental professionals (H.B. 880 - Wood)
  - d. Psychology Practice Act (H.B. 452 - Lemmond)
- (18) Property issues.
- a. Property rights (H.B. 597 - Nichols)
  - b. Extraterritorial jurisdiction representation (H.J.R. 73 - Ellis)
  - c. Annexation laws (H.B. 660 - Pulley; H.B. 539 - Sherrill)
  - d. Condemnation by government entities, including the condemnation process, fair market value for property, payment of condemnees' attorneys' fees and court costs, and related matters (Allred)
- (19) Revenue and tax issues:
- a. Revenue laws (H.B. 246 - Gamble)
  - b. Interstate Tax Agreements (S.J.R. 122 - Webster)
  - c. Tax expenditures (H.J.R. 95 - Gamble, Luebke)
  - d. Nonprofit continuing care facilities property tax exemption (S.B. 980 - Plexico and Sherron)
  - e. Diesel Fuel Payment method (S.B. 797 - Hoyle; H. B. 975 - Barbee)
  - f. Taxation of business inventory donated to nonprofit organization (McMahan)
- (20) State Personnel Issues, including needed revisions to the State Personnel Act (Morgan)
- (21) State purchasing and Correction Enterprises (S.B. 420 - Kerr, Sherron; H.B. 302 - Warner)
- (22) Water issues:
- a. Water issues (S.B. 95 - Albertson; H.B. 46 - Ives)
  - b. Drinking water tests (H.B. 930 - Allred)
  - c. Water conservation measures to reduce consumption (Sherron)

**Sec. 2.2. Executive Budget Act Revision (Morgan, Holmes, Gray).** The Legislative Research Commission may study the Executive Budget Act and the budget process. The study may consider this State's and other states' laws and policies on the budget process and any other matters it considers necessary in order to recommend a complete revision of the Executive Budget Act and its policies. A study of these revisions shall specifically address the constitutional requirement of separation of powers as it relates to proposing, enacting, and executing a State budget and as it relates to the gubernatorial veto.

**Sec. 2.3. Criminal Laws and Procedures; Sentencing (Neely, Odom, and Ballance).** The Legislative Research Commission may study criminal laws and procedures, including criminal offenses, criminal penalties, criminal process and procedure, sentencing, and related matters.

**Sec. 2.4. Downtown Revitalization (Brawley and Sherron).** The Legislative Research Commission may study ways to encourage the development and use of downtown area structures. The use of these structures may include both commercial and residential uses in the same structure. To encourage the development of downtown area structures, the



Legislative Research Commission study should evaluate the usefulness and cost-effectiveness of providing the following State and local incentives:

- (1) Income tax credits.
- (2) Reduced property tax liability through the use of exemptions, deferrals, or lower values.
- (3) Zoning law modifications.
- (4) Building code modifications.

**Sec. 2.5.** State and Federal Retirees (Rand, Perdue, Warren, Edwards, Grady, Morgan, Gray). The Legislative Research Commission may study North Carolina's tax treatment of the retirement benefits of State and federal government retirees residing in North Carolina, the potential need to make changes in the revenue laws of North Carolina relative to such benefits, and recommendations by which any alleged unconstitutional or inequitable tax treatment of retirement benefits might be redressed.

**Sec. 2.6.** Cape Fear River Basin (Shaw). The Legislative Research Commission may study the uses of the Cape Fear River Basin, including increased economic development, the use of hydroelectric power, recreational uses, and improving water quality for citizens of southeastern North Carolina.

**Sec. 2.7.** Workers' Compensation (S.J.R. 996 - Kerr). The Legislative Research Commission may study the effect of the assigned risk pool on small employers, the funding mechanisms of the Industrial Commission, workers' compensation premium tax, or any other matter raised by the Chairman or Advisory Panel of the Industrial Commission; provided, however, the Legislative Research Commission shall not study any matter contained in the original or any subsequent version of Senate Bill 906, the legislation that led to the Workers' Compensation Reform Act of 1994. The Commission may also study the issue of funding of workers' compensation for volunteer fire department and rescue squad members.

**Sec. 2.8.** Committee Membership. For each Legislative Research Commission committee created during the 1995-96 biennium, the cochair of the Legislative Research Commission shall appoint the committee membership.

**Sec. 2.9.** Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1996 Regular Session of the 1995 General Assembly, if approved by the cochair, or the 1997 General Assembly, or both.

**Sec. 2.10.** Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

**Sec. 2.11.** Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

## PART III.-----SENATE AND HOUSE STUDIES

**Sec. 3.1.** The President Pro Tempore of the Senate may direct a Senate standing committee or select committee to study the following issues:

(a) Campaign reform (S.B. 982 - Plexico).

(b) Travel and Tourism Division of Department of Commerce merger with the Division of Parks and Recreation of the Department of Environment, Health, and Natural Resources (S.J.R. 1050 - Sherron).

**Sec. 3.2.** The Speaker of the House of Representatives may direct a House standing committee, permanent standing subcommittee, or select committee to study the following:

(a) Issues involved in tort reform which were introduced in the 1995 Regular Session of the General Assembly but not enacted (Daughtry).

(b) The facilitation of greater cooperation between the public and nonprofit sectors and the fostering of growth of the nonprofit sector, including, but not limited to, a review of government funding of nonprofits through State agencies, allowing local governments to take measures to encourage philanthropy within their communities and the feasibility of privatization of services and programs through nonprofit organizations (McMahan).

**Sec. 3.3.** A standing committee, permanent subcommittee, or select committee may report pursuant to this Part to the 1996 Regular Session of the 1995 General Assembly with any recommended legislation.

#### **PART IV.----BLUE RIBBON STUDY COMMISSION ON AGRICULTURAL WASTE (S.B. 695 - Albertson; H.B. 524 - H. Hunter).**

**Sec. 4.1.** The Blue Ribbon Study Commission on Agriculture Waste is created in the General Assembly. The Commission shall study the following issues:

- (1) The effect of agriculture waste on groundwater, drinking water, and air quality and any other environmental impacts of agriculture waste.
- (2) Methods of disposing of and managing agriculture waste currently in use in this State.
- (3) Methods of disposing of and managing agriculture waste that have fewer adverse impacts than those methods currently in use in this State, including positive commercial and noncommercial uses of agriculture waste.
- (4) The economic impact of agriculture waste in areas in this State where there is a high concentration of agriculture waste, including, but not limited to, the impact on property values of land adjacent to agriculture sites and on water treatment costs.
- (5) Implementation of the recommendations contained in the Swine Odor Task Force reports by the Swine Farm Odor Abatement Study authorized by Section 45 of Chapter 561 of the 1993 Session Laws and any recommendations that result from the federally funded study of the potential for groundwater contamination from animal waste lagoons currently being conducted by the Groundwater Section of the Department of Environment, Health, and Natural Resources.

- (6) General economic impact of agriculture industries on areas of the State with a high concentration of agriculture waste.
- (7) Coordination of regulatory activities and any other activities between federal, State, and local government agencies with jurisdiction over any aspect of agriculture industries.
- (8) Identification of beneficial uses of agriculture waste.

**Sec. 4.2.** The Blue Ribbon Study Commission on Agriculture Waste shall consist of 18 members to be appointed as follows:

- (1) Six members appointed by the President Pro Tempore of the Senate.
- (2) Six members appointed by the Governor.
- (3) Six members appointed by the Speaker of the House of Representatives.

The President Pro Tempore of the Senate and the Speaker of the House of Representatives each shall select a cochair. A majority of the Commission shall constitute a quorum for the transaction of business.

**Sec. 4.3.** The Commission shall submit a final report of its findings and recommendations to the 1996 Regular Session of the 1995 General Assembly by filing the report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives prior to the convening of the 1996 Regular Session of the 1995 General Assembly. The final report shall contain the findings, recommendations, and any legislative proposals of the Commission. The final report shall identify areas in the State where there is a significant concentration of agriculture waste; include recommendations on reducing agriculture waste in areas where there is an identified and significant harmful impact on groundwater or drinking water; and include recommendations on implementing any of the recommendations contained in the Swine Odor Study or the Groundwater Study considered by the Commission under this Part. If at any time during its deliberations, the Commission identifies a recommendation that can be implemented through the Administrative Procedure Act, Chapter 150B of the General Statutes, the Commission shall forward that recommendation with the proposed rule change to the responsible State agency for immediate consideration.

**Sec. 4.4.** Members appointed to the Commission shall serve until the Commission makes its final report. Vacancies on the Commission shall be filled by the same appointing officer who made the original appointments. The Commission shall terminate upon the filing of its final report.

**Sec. 4.5.** The Commission may contract for consultant services as provided by G.S. 120-32.02. The Commission may obtain assistance from North Carolina State University, particularly from those university resources associated with the ongoing studies conducted by the Swine Odor Task Force. Upon approval of the Legislative Services Commission, the Legislative Administrative Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of House and Senate supervisors of clerks. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Commission, while in the discharge of official duties,

may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4.

**Sec. 4.6.** Members of the Commission shall receive per diem, subsistence, and travel allowances as follows:

- (1) Commission members who are also General Assembly members, at the rate established in G.S. 120-3.1.
- (2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6.
- (3) All other Commission members, at the rate established in G.S. 138-5.

**Sec. 4.7.** From funds appropriated to the General Assembly, the Legislative Services Commission may allocate funds for the expenses of the Commission under this Part.

#### PART V.-----CONCEALED HANDGUNS (Rand)

**Sec. 5.1.** The Governor's Crime Commission established pursuant to Part 3 of Article 11 of Chapter 143B of the General Statutes shall study the effects of the enactment of Article 54B of Chapter 14 of the General Statutes, Concealed Handgun Permit, as enacted by Chapter 398 of the 1995 Session Laws. The Commission shall:

- (1) Review the number of permits denied, issued, and revoked.
- (2) Review any data on the use of concealed handguns by those who have permits including to the extent available:
  - a. Instances where a crime was prevented by a person who was carrying a concealed handgun pursuant to a permit.
  - b. Instances where a child or another person was accidentally injured by a handgun carried by a person with a concealed handgun permit.
  - c. Instances where a handgun was used inappropriately by a person with a concealed weapon permit.
- (3) Attempt to determine the effect of Article 54B on crime in the State and on the safety of the public.

**Sec. 5.2.** The Governor's Crime Commission shall conduct this study with funds appropriated or otherwise available to the Department of Crime Control and Public Safety.

**Sec. 5.3.** The Governor's Crime Commission may report to the 1996 Regular Session of the 1995 General Assembly and shall report to the 1997 General Assembly upon its convening.

#### PART VI.-----COOPERATIVE AGRICULTURE AND SEAFOOD EXPORTS IN RURAL COUNTIES (Basnight)

**Sec. 6.1.** The Joint Legislative Commission on Seafood and Aquaculture established pursuant to G.S. 120-70.60 shall study the use of agriculture and seafood cooperatives that can be utilized to enhance and promote economic development through the production of value added products which include raw material resources and related infrastructure weaknesses of rural and coastal counties.



Sec. 6.2. The Commission may make an interim report to the 1996 Regular Session of the 1995 General Assembly and shall report to the 1997 General Assembly upon its convening.

**PART VII.-----ERC STUDY CONSOLIDATION OF ENVIRONMENTAL RULE MAKING AND QUASI-JUDICIAL FUNCTIONS INTO ONE ENVIRONMENTAL COMMISSION (S.B. 1071 - Perdue)**

Sec. 7.1. (a) The Environmental Review Commission established pursuant to Article 12D of Chapter 120 of the General Statutes shall study the organization, powers, duties, and functions of the boards, commissions, and councils within State government that currently exercise environmental rule making and quasi-judicial functions to determine whether those functions should be consolidated into a single, full-time Environmental Commission patterned after the North Carolina Utilities Commission. In conducting this study, the Environmental Review Commission shall evaluate options and develop recommendations for an Environmental Commission to:

- (1) Balance the interests of environmental protection and economic development within the State.
- (2) Represent in the membership of the Environmental Commission both environmental impact and economic impact assessment specialists.
- (3) Enhance the efficiency of the environmental regulatory process.
- (4) Serve as the single rule-making body regarding environment, natural resources, and health-related environmental matters.
- (5) Coordinate regulatory programs across a broad range of environmental policy.
- (6) Resolve disputes between State environmental agencies and other persons through a fair and efficient administrative hearings process.
- (7) Hear and decide all appeals of environmental permit decisions.
- (8) Provide for appeal directly to the Appellate Division of the General Court of Justice.
- (9) Be exempt from Chapter 150B of the General Statutes.
- (10) Complete the consolidation of environmental regulatory programs within the Department of Environment, Health, and Natural Resources.
- (11) Facilitate public involvement by providing for citizen advisory councils for specific program areas.
- (12) Restructure the Department of Environment, Health, and Natural Resources to reflect the development of the Environmental Commission.
- (13) Consider the role, structure, and function of the staff of the Environmental Commission and whether any staff of the Department of Environment, Health, and Natural Resources should be used to staff the Environmental Commission.

(b) The Environmental Review Commission shall review, at a minimum, the organization, powers, duties, and functions of the following boards, commissions, and councils that currently address environmental

matters to determine the desirability and feasibility of incorporating their powers, duties, and functions into an Environmental Commission:

- (1) Coastal Resources Commission.
- (2) Environmental Management Commission.
- (3) Commission for Health Services.
- (4) Marine Fisheries Commission.
- (5) Mining Commission.
- (6) Sedimentation Control Commission.
- (7) Soil and Water Conservation Commission.
- (8) Water Pollution Control System Operators Certification Commission.
- (9) Water Treatment Facility Operators Board of Certification.
- (10) Wildlife Resources Commission.
- (11) Pesticide Board.
- (12) Structural Pest Control Committee.

(c) The Environmental Review Commission shall report its findings and recommendations, including any proposals for legislation, to the 1997 General Assembly on or before 15 February 1997.

#### PART VIII.-----DEHNR STUDY/ENVIRONMENTAL REGULATION (S.B. 951-Gulley)

**Sec. 8.1.** (a) The Department of Environment, Health, and Natural Resources shall conduct a study of its mission, authority, duties, structure, and permit process related to environmental programs and shall consider specific actions being undertaken by the Department and further proposals for coordinating and streamlining environmental regulatory and permit processes, which actions and proposals shall include:

- (1) General changes to improve customer service and accountability:
  - a. Ways to manage and train Department employees to provide better customer service; and
  - b. Ways to improve the efficiency, effectiveness, accountability, flexibility, and fairness of the State environmental regulatory and permit processes.
- (2) Structural and organizational changes to improve performance and effectiveness of environmental programs.
- (3) Narrowing the scope of permitted activities:
  - a. Any activities that presently require permits that can be regulated through some more efficient means, such as registration or not at all without undue risk to public health and the environment; and
  - b. Eliminating redundant and nonsubstantive activities whose environmental and health effects are known to be insignificant.
- (4) Alternatives to individualized permitting:
  - a. Issuing temporary permits to businesses installing new equipment that will facilitate implementation of pollution prevention; and
  - b. Issuing temporary or other fast-track permits to facilitate remediation.

- (5) Improvements in processing for individualized permitting:
  - a. Eliminating process bottlenecks that delay the processing of permits;
  - b. Prioritizing applications in a consistent and efficient manner;
  - c. Eliminating unnecessary hearings; and
  - d. Rewarding persons who implement pollution prevention programs and comprehensive self-auditing or other quality environmental management programs through recognition and priority in permit processing.
- (6) Improvements in applicants' and affected parties' understanding of the permit system:
  - a. Providing applicants with checklists for completing applications;
  - b. Advising permit applicants and affected parties of the expected timetable for processing permit applications;
  - c. Developing a consistent process and forms that minimize redundant information requests for environmental permit applications across the various divisions and commissions within the Department;
  - d. Providing improved and more consistent notice of permit applications and decisions;
  - e. Improving Department permit and compliance information systems to allow permit applicants and interested persons quick and simple access to information about permit applications and permitted facilities; and
  - f. Developing methods for providing direct compliance assistance, such as assistance in determining which permit requirements apply to particular facilities and assistance in preparing the permit applications or commenting on permit applications.
- (7) Improvements in fee structures and fee handling:
  - a. Revising current fee structures for fairness and consistency and to balance the costs of program administration and the impact of fees on regulated business; and
  - b. Demonstrating accountability on expenditure of receipts.
- (b) The Department shall select an equal number of representatives from local government, industry, small business, and environmental groups to work with and advise the Department in developing the proposals set forth in subsection (a) of this section.

**Sec. 8.2.** The Department shall report its findings regarding specific actions being undertaken, its recommendations for further proposals for coordinating and streamlining the environmental regulatory and permit processes, and its progress toward these ends to the Environmental Review Commission no later than 1 January 1996. The Department shall participate in developing any necessary legislative proposals and proposals for rule changes to implement the report's recommendations.

**Sec. 8.3.** The Department shall conduct this study with funds appropriated or otherwise available to the Department.

**PART IX.-----FUEL TAX EXEMPTION FOR COMMUNITY COLLEGES**  
(S.B. 894 - Conder)

**Sec. 9.1.** The Joint Legislative Transportation Oversight Committee established pursuant to G.S. 120-70.50 shall study the issue of restoring the motor fuel tax exemption for fuel used in vehicles owned by a community college.

**Sec. 9.2.** The Committee may make an interim report to the 1996 Regular Session of the 1995 General Assembly and shall report to the 1997 General Assembly upon its convening.

**PART X.-----HIGHWAY PATROL TROOP AND DISTRICT BOUNDARIES** (Perdue)

**Sec. 10.1.** The North Carolina State Highway Patrol shall study the current highway patrol troop and district boundaries and the location of troop and district headquarters to determine whether all areas of the State are adequately served by the current configuration. In the course of the study, the Highway Patrol shall:

- (1) Consider (i) the geographical area covered and the population served by each troop and (ii) the distance between troopers and their headquarters and maintenance garages.
- (2) Determine whether and how troop and district boundaries may be reconfigured to serve the daily operation of the Highway Patrol more efficiently and effectively.
- (3) Propose cost-effective ways to implement any proposed reconfiguration.

**Sec. 10.2.** The Highway Patrol shall report the results of its study to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Transportation Oversight Committee prior to March 31, 1996.

**Sec. 10.3.** The Highway Patrol shall conduct this study with funds appropriated or otherwise available to the Department of Crime Control and Public Safety.

**PART XI.----- INMATE HOUSING**

**Sec. 11.1.** The Joint Legislative Corrections Oversight Committee, established under Article 12J of Chapter 120 of the General Statutes, shall study the issue of inmate housing (S.B. 31 - Hobbs). The Committee shall report its findings and recommendations to the 1996 Regular Session of the 1995 General Assembly.

**PART XII.-----NORTH CAROLINA HEALTH CARE REFORM COMMISSION** (Morgan, Holmes, Gray)

**Sec. 12.1.** (a) The North Carolina Health Care Reform Commission established pursuant to Article 65 of Chapter 143 of the General Statutes may study Medicaid and medical cost containment in order to develop a medical cost containment policy that ensures that appropriate public medical care is delivered in a cost-effective manner. The study may examine federal Medicaid laws and regulations, federal and state medical cost containment initiatives, medical cost containment initiatives in North Carolina, including



recommendations from the Government Performance Audit Committee to the 1993 General Assembly, and related matters.

(b) (S.B. 1044 - Speed and Perdue) The North Carolina Health Care Reform Commission shall study the methods of financing immunization services and their impact on age-appropriate immunization rates and other immunization programs.

(c) (S.B. 545 - Parnell; H.B. 741 - Blue) The North Carolina Health Care Reform Commission shall study the issue of fees for copies of medical records.

(d) The Commission shall conduct this study using funds appropriated or otherwise available to the Commission. The Commission may make an interim report for any studies authorized by this part to the 1996 Regular Session of the 1995 General Assembly and shall report to the 1997 General Assembly upon its convening.

### PART XIII.-----MENTAL HEALTH STUDY COMMISSION REAUTHORIZATION

(S.B. 249 - Conder; H.B. 282 - Alexander)

**Sec. 13.1.** The Mental Health Study Commission, established and structured by 1973 General Assembly Resolution 80; Chapter 806, 1973 Session Laws; Chapter 185, 1975 Session Laws; Chapter 184, 1977 Session Laws; Chapter 215, 1979 Session Laws; 1979 General Assembly Resolution 20; Chapter 49, 1981 Session Laws; Chapter 268, 1983 Session Laws; Chapter 792, 1985 Session Laws; Chapter 873, 1987 Session Laws; Chapter 802, 1989 Session Laws; Chapter 754, 1991 Session Laws; and Chapter 771, 1993 Session Laws, Regular Session 1994, is reestablished and authorized to continue in existence until July 1, 1997.

**Sec. 13.2.** (a) The Commission shall consist of 25 members as follows:

- (1) The Secretary of the Department of Human Resources or a delegate, serving ex officio as a nonvoting member.
- (2) Eight members appointed by the Speaker of the House of Representatives, seven of whom shall be members of the House of Representatives at the time of their appointment. One of these seven shall be a Chair of the House Appropriations Subcommittee on Human Resources, and one shall be a Chair of a standing House committee that deals with mental health, developmental disabilities, and substance abuse issues.
- (3) Eight members appointed by the President Pro Tempore of the Senate, seven of whom shall be members of the Senate at the time of their appointment. One of these seven shall be Chair of the Senate Human Resources Appropriations Committee and one shall be Chair of a standing Senate committee that deals with mental health, developmental disabilities, and substance abuse issues.
- (4) Eight members appointed by the Governor, two of whom shall be county commissioners at the time of their appointment, selected from a list of four candidates nominated by the North Carolina Association of County Commissioners. If the Association has

failed to make nominations by September 1, 1995, the Governor may appoint any two county commissioners.

(b) Members and staff of the continued Mental Health Study Commission shall receive compensation and expenses delineated by the original authorization in the 1973 General Assembly Resolution 80. Expenses of the Commission shall be expended by the Department of Human Resources from Budget Code 14460 subhead 1110.

**Sec. 13.3.** The continued Mental Health Study Commission has all the powers and duties of the original Commission as they are necessary to continue the original study, to assist in the implementation of the original and succeeding Commission recommendations, and to plan future activity on the subject of the study. In addition to other studies authorized by law, the Commission shall perform the following activities:

- (1) Conduct research and develop recommendations regarding the response of the public system to the changing health care environment. These recommendations shall address issues of governance, accountability, data collection, and collaboration between public and private sectors.
- (2) Analyze and develop recommendations regarding the current system of funding services to evaluate maximum use of funds.
- (3) Oversee the Mental Health Study Commission 10-year Disability Plans that have been endorsed by the General Assembly.
- (4) Evaluate quality improvement initiatives and develop recommendations regarding accountability, performance standards, and client outcomes.
- (5) Monitor and evaluate the new initiatives, including crisis services, Carolina Alternatives, and domiciliary care, developed by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and consider whether to recommend their possible expansion.
- (6) Review major initiatives for children for integration with the Child Mental Health Plan.
- (7) Develop a business initiative to increase public/private partnerships to enhance current services for those individuals with mental illness, developmental disabilities, and substance abuse problems.
- (8) Carry out any other evaluations the Commission considers necessary to perform its mandate.

**Sec. 13.4.** The Mental Health Study Commission shall make a final report to the 1997 General Assembly, including any legislative proposals, by March 15, 1997, and may make an interim report, including any legislative proposals, to the 1996 Regular Session of the 1995 General Assembly on or before May 15, 1996.

#### PART XIV.-----SCHOOL CAPITAL CONSTRUCTION STUDY COMMISSION (Winner; H.B. 1041 - Owens)

**Sec. 14.1.** (a) The School Capital Construction Study Commission is established. The Commission consists of the following 20 members:

- (1) Six members, four of whom shall be members of the House of Representatives, appointed by the Speaker of the House of Representatives.
  - (2) Six members, four of whom shall be members of the Senate, appointed by the President Pro Tempore of the Senate.
  - (3) Three members appointed by the Governor.
  - (4) The Chair of the State Board of Education, or one member appointed by the Chair.
  - (5) The President of the School Board Association, or one member appointed by the President.
  - (6) The President of the Association of County Commissioners, or one member appointed by the President.
  - (7) The Superintendent of Public Instruction, or one member appointed by the Superintendent.
  - (8) The State Treasurer, or one member appointed by the Treasurer.
- All appointments shall be made no later than September 1, 1995. Vacancies shall be filled by the person who made the initial appointment.

(b) The Commission shall conduct a comprehensive study of public school facilities in the State. The study shall:

- (1) Identify the public school facility needs of the State based upon a consideration of factors such as local growth rates and the age of existing facilities.
- (2) Develop criteria for ranking the identified public school facility needs in priority order that take into consideration factors that will ensure the ranking is equitable.
- (3) Identify the federal, State, and local funds that are currently available to meet the identified public school facility needs, and analyze how they are being utilized.
- (4) Examine the roles the State and the counties should play in providing funds to meet public school facility needs. In particular, the Commission shall evaluate the extent to which public school facility needs should be met by counties. As part of this examination, the Commission shall consider the impact of mandates to provide social services on counties' ability to generate local revenue.
- (5) Explore various methods of governmental financing to meet identified public school facility needs, and recommend ways to obtain any additional funding needed to meet these needs.
- (6) Evaluate how current formulas for providing additional funds for schools in low-wealth counties and small school systems and the factors considered in these formulas affect the counties' ability to meet their public school facility needs. As part of this evaluation, the Commission shall consider whether the size of the school system or wealth of the county affects the extent of the county's public school facility needs and of the county's ability to meet those needs. Based on its evaluation, the Commission shall recommend whether any category of schools should receive special funding, and shall determine the source for this funding and the formula for distributing this funding.

- (7) Consider the utility, effectiveness, and efficiency of developing model designs for public school facilities that are energy-efficient and technologically adequate. The Commission also shall consider ways to use appropriately the State's schools of architecture and design in the development of these designs.
- (8) Develop a long-term plan for funding the identified public school facility needs in an equitable and adequate manner.
- (9) Consider any other issue the Commission considers relevant.
- (c) Each local school administrative unit shall assist the Commission by submitting to the Commission a list of the public school facility needs of the unit. The list shall include a written justification of the reason for including each item on the list and a statement that the county commissioners of the county in which the unit is located has approved or disapproved the list. If the county commissioners of the county in which the unit is located fail to approve the list, they shall submit their list of the public school facility needs that includes a written justification of the reasons for submitting a separate list and for including each item on the list.
- (d) The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair of the Commission. The Commission shall meet upon the call of the cochairs. A quorum of the Commission is 11 members. While in the discharge of its official duties, the Commission has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1.

Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

The Legislative Administrative Officer shall assign as staff to the Commission professional employees of the General Assembly. Clerical staff shall be assigned to the Commission through the Offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives.

(e) The Commission shall submit a progress report to the General Assembly by January 15, 1996, and shall submit a final report, including recommendations, to the General Assembly by April 15, 1996. A report to the General Assembly shall be submitted to the Legislative Library and to the Fiscal Research Division. The Commission shall terminate upon filing its final report.

(f) From funds appropriated to the General Assembly, the Legislative Services Commission may allocate funds for the expenses of the Commission under this Part.

**PART XV.-----STATE AND LOCAL GOVERNMENT FISCAL RELATIONS AND TRENDS STUDY COMMISSION** (S.B. 376 - Kerr; S.B. 435, S.B. 446 - Sherron; S.B. 1048 - McDaniel; S.B. 1070 - Perdue; C. Wilson; H.B. 3, §2 - Russell; H.B. 747 - Lemmond; H.B. 854 - Wilkins; H.J.R. 883 - Arnold; H.J.R. 977 - House Loc. & Reg. II)

**Sec. 15.1.** (a) The State and Local Government Fiscal Relations and Trends Study Commission is established to study the fiscal responsibility of local governments, including structure, powers, finance and revenue



options, and unfunded mandates; whether North Carolina's current system of shared responsibility for administering and financing public services is meeting the needs of the State and its communities; how that system might be improved to make the provision of public services more effective, efficient, and equitable; and identify trends affecting the fiscal resources of the State and local government. The Commission shall consist of 10 members, as follows:

- (1) The President Pro Tempore of the Senate or a designee;
  - (2) The Speaker of the House of Representatives or a designee;
  - (3) Four Senators appointed by the President Pro Tempore of the Senate; and
  - (4) Four Representatives appointed by the Speaker of the House of Representatives.
- (b) Appointment to the Commission shall be made before September 15, 1995. The first meeting of the Commission shall be held no later than October 13, 1995.
- (c) The President Pro Tempore of the Senate and the Speaker of the House of Representatives, or their designees, shall serve as cochairs of the Commission.

**Sec. 15.2.** (a) The Commission is authorized to review the current responsibilities of State agencies and units of local government for administering, financing, and making decisions about public services. It shall give particular attention to those statewide services that are administered by counties on behalf of the State, such as public education at both the K-12 level and through the community college system; public health; mental health, developmental disabilities, and substance abuse services; and social services programs. It may also consider services that once were administered by local governments, such as secondary roads; services that are primarily provided by the State but have some component of local responsibility, such as court facilities; and other public services that are provided and financed primarily by local governments, such as law enforcement, city streets, solid waste collection and disposal, and water and sewer services. The Commission is also authorized to study fiscal trends and may review expenditures of the State and identify trends that will impact these expenditures.

(b) In reviewing the allocation of responsibility for public services among the State and its local governments, the Commission shall address the following issues:

- (1) Whether all or some portion of the service could be more effectively and efficiently provided by the private sector, with or without some form of public-private partnership;
- (2) Which level of government and which units within each level should be made responsible for providing and administering the service;
- (3) Whether revenues needed to finance the service should come from the State or its local governments, or from some combination of State and local revenue sources, and which revenue sources should be used to finance the service;

- (4) The extent to which local governments should be free to provide the service or not and at what level of effort;
  - (5) The extent to which the State should impose some degree of uniformity in levels or quality of service by setting standards and guidelines or imposing mandates; and
  - (6) How best to address the need to achieve statewide uniformity in the provision of certain services, such as those required by federal or State law to be provided uniformly throughout the State, while at the same time providing local governments with the flexibility needed to administer the programs effectively.
- (c) The Commission shall:
- (1) Review long-term fiscal trends and to analyze the impact of these trends on the State budget.
  - (2) Identify the factors that have contributed to the financial problems of the State and recommend measures to avoid a recurrence of those problems to the extent they are within the control of the State of North Carolina.
  - (3) Monitor the State budget reform measures.
  - (4) Analyze options to address the effect on the State budget of federal legislative and judicial mandates.
  - (5) Review the condition of programs directed at ensuring an adequate workforce for the State's future.
  - (6) Analyze options to address future General Fund budget shortfalls.
  - (7) Study the feasibility of modifying the State's accounting practices to improve the State's balance sheet by treating as accrued (i) sales tax proceeds that have been collected on behalf of the State by merchants but have not yet been remitted and (ii) other tax proceeds that have been collected on behalf of the State but have not yet been remitted.
  - (8) Review the State's needs for changes in the revenue and budget structure to meet the needs of the State over the long term.
  - (9) Make a comprehensive review of the State and local tax system, particularly in light of future economic trends that may affect revenues generated by existing taxes.
  - (10) Consider proposals to enhance the State's revenue position, adapt the State tax structure to changes in the economy, avoid placing undue tax burdens on any segment of the population, and preserve the positive impact of the tax structure on the economic future of the State.
  - (11) Study the proper role of State government in fostering the growth of small businesses, including the financial and managerial needs of small businesses, the extent to which the State can and should meet those needs, the use of tax incentives as a means of stimulating small business growth and expansion, such as the expansion of the jobs tax credit and further tax credits for venture capital, and how organizations within State government can provide programs that support small business.
  - (12) Examine State and local expenditures and tax relief for economic development and economic incentives.

- (13) Review issues concerning planned community acts and partnerships for quality growth.

(d) In reviewing how public services are financed, the Commission shall conduct a review of all sources of revenue available to local governments, including locally levied taxes, charges, fees, intergovernmental revenues, and State revenues shared with local governments. This review shall include consideration of:

- (1) Current trends in local government spending and revenues;
- (2) The extent to which existing local revenue sources are or can be made responsive to changes in the demand for services;
- (3) The extent to which existing local revenue sources allocate the burden of financing public services in a just and equitable manner;
- (4) Whether additional sources of revenue for local governments are needed;
- (5) Current State policy and practice with respect to mandating provision of public services at the local level without commensurate support from State-collected revenues; and
- (6) Current State policy and practice with respect to distributing State-collected revenues to local governments to compensate for legislated changes in local revenue sources.

**Sec. 15.3.** The Commission may make an interim report of its findings and recommendations to the General Assembly on or before the first day of the 1996 Regular Session. The Commission shall submit a final report of its findings and recommendations to the General Assembly on or before the first day of the 1997 Session by filing the report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Upon filing its final report, the Commission shall terminate.

**Sec. 15.4.** The Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building with the approval of the Legislative Services Commission.

**Sec. 15.5.** Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1.

**Sec. 15.6.** The Commission may contract for professional or consultant services as provided by G.S. 120-32.02. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission, upon the direction of the Legislative Services Commission.

**Sec. 15.7.** When a vacancy occurs in the membership of the Commission, the vacancy shall be filled by the same appointing officer who made the initial appointment.

**Sec. 15.8.** All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

**Sec. 15.9.** From funds appropriated to the General Assembly, the Legislative Services Commission may allocate funds for the expenses of the Commission under this Part.

#### PART XVI.-----STATE PORTS STUDY

**Sec. 16.1.** (a) There is established in the General Assembly the State Ports Study Commission. The purpose of the Commission is to study the status, resources and operations of the ports of North Carolina, to determine whether the ports are serving the needs of exporters and importers in North Carolina, and to develop ways in which North Carolina industries and the State would benefit from port improvements and modifications.

(b) The Commission shall consist of 12 members as follows:

- (1) Three Senators appointed by the President Pro Tempore of the Senate.
- (2) Three Representatives appointed by the Speaker of the House of Representatives.
- (3) Two representatives of North Carolina industries appointed by the Governor.
- (4) Two representatives of North Carolina industries appointed by the President Pro Tempore of the Senate; and
- (5) Two representatives of North Carolina industries appointed by the Speaker of the House of Representatives.

Appointments to the Commission shall be made before September 1, 1995.

The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall appoint as cochair of the Commission from the General Assembly membership to serve on this Commission. All members shall serve at the will of their appointing officer. Unless removed or unless resigning, members shall serve until the Commission has made its report. Vacancies in membership shall be filled by the appropriate appointing officer.

The first meeting of the Commission shall be held no later than September 21, 1995.

(c) The Commission shall:

- (1) Review the roles of the ports in the economy of North Carolina, the transportation system necessary to port development, the administrative location of the ports, the desirability of privatization and leasing of ports, and any other issues directly pertaining to ports development and improvement of North Carolina ports;
- (2) Examine and review the current operations of the ports, and of the State Ports Authority, and the ways in which policies and plans for the ports are formed and administered;
- (3) Endeavor to determine (i) the cost-effectiveness of port operations, the returns realized by the State on its investment, (ii) whether there are alternatives to the current methods of operations which would be more beneficial to the taxpayers, and (iii) ways, if any, that services to North Carolina business and industry, including the port industries and the exporters and importers, could be improved or modified for the mutual benefit of those private industries and the State;



- (4) Examine and review the methodologies in use by ports in other states that have achieved apparently more favorable returns to their states and industries;
  - (5) Recommend a methodology for establishing and administering a long-term planning procedure for the State Ports Authority; and
  - (6) Study the use and development of Radio Island.
- (d) The Commission may contract for consultant services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Administrative Officer shall assign professional and clerical staff to assist in the work of the Commission. The professional staff shall include the appropriate staff from the Fiscal Research, Research, and Legislative Drafting Divisions of the Legislative Services Office of the General Assembly. Clerical staff shall be furnished to the Commission through the offices of House of Representatives and Senate Supervisors of Clerks. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Commission, while in the discharge of official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information and any data within their possession or ascertainable from their records, and the power to subpoena witnesses.

Members of the Commission shall receive per diem, subsistence, and travel allowances as follows:

- (1) Commission members who are members of the General Assembly, at the rate established in G.S. 120-3.1;
  - (2) Commission members who are officials or employees of the State or of local government agencies, at the rate established in G.S. 138-6; and
  - (3) All other Commission members, at the rate established in G.S. 138-5.
- (e) The Commission shall report the results of its study and its recommendations to the 1995 General Assembly by May 1, 1996. The Commission shall terminate upon filing its final report.
- (f) All State departments and agencies shall furnish the Commission with documents and information in their possession or available to them.
- (g) From funds appropriated to the General Assembly, the Legislative Services Commission may allocate funds for the expenses of the Commission under this Part.

#### PART XVII.-----TAR IN CIGARETTES (S.B. 949 - Conder)

Sec. 17.1. The Board of Governors of The University of North Carolina is requested to direct North Carolina State University to conduct research into reducing the level of tar in cigarettes using funds appropriated or otherwise available to The University of North Carolina.

#### PART XVIII.-----TOXIC AIR POLLUTANT STUDY (Rand)

Sec. 18.1. The Environmental Review Commission established pursuant to Article 12D of Chapter 120 of the General Statutes shall study:

- (1) The existing State toxic air pollutant control program under Chapter 2 of Title 15A of the North Carolina Administrative Code and its relation to the new federal hazardous air pollution control program established by the 1990 amendments to Title III of the federal Clean Air Act, including the differing approaches employed by each of these programs.
- (2) Whether there is overlap or duplication of functions and results between these State and federal programs and ways to reduce or eliminate any overlap or duplication that may exist.
- (3) The benefits and costs to the State, the citizens of North Carolina, and regulated businesses and industries of continuing both programs.
- (4) The role and activities of the Scientific Advisory Board on Toxic Air Pollutants of the Department of Environment, Health, and Natural Resources under the State Toxic Air Pollutant Program.

**Sec. 18.2.** The Environmental Review Commission shall report the findings and recommendations of this study to the General Assembly upon the convening of the 1996 Regular Session.

#### **PART XIX.-----PLASTICS RECYCLING (H.B. 1066 - Luebke)**

**Sec. 19.1.** The Environmental Review Commission shall study plastics recycling. The Commission shall report its findings and recommendations to the General Assembly no later than 15 February 1997.

#### **PART XX.-----JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE**

**Subpart A. Natural Gas Pipeline Extension (S.B. 570 - Soles; H.B. 684 - McComas)**

**Sec. 20.1.** The Joint Legislative Utility Review Committee is directed to study whether or not the extension of interstate natural gas pipelines into North Carolina can and should be encouraged by amending Chapter 62 of the General Statutes to provide that facilities selling electric power and thermal energy generated with natural gas from that pipeline should be exempted from regulation as public utilities. The Committee shall also study whether any other provisions of Chapter 62 of the General Statutes should be amended to encourage the construction of new interstate pipelines in North Carolina.

**Sec. 20.2.** The Joint Legislative Utility Review Committee shall report its findings and any recommendations under this subpart for legislation to the 1996 Regular Session of the 1995 General Assembly.

**Subpart B. Utility Energy Cost (H.B. 931 - Allred)**

**Sec. 20.3.** The Joint Legislative Utility Review Committee is authorized to study the issues related to calculating avoided costs for small power producers and may recommend any needed changes to the General Assembly.

**Sec. 20.4.** The Committee is authorized to report any findings and recommendations under this subpart to the 1997 General Assembly and may

make an interim report, including any recommended legislation, to the 1996 Regular Session of the 1995 General Assembly.

Subpart C. Expansion of Joint Legislative Utility Review Committee Membership

**Sec. 20.5.** G.S. 120-70.2, as amended by Section 1 of Chapter 440 of the 1995 Session Laws, reads as rewritten:

"§ 120-70.2. *Appointment of members and organization.*

The Joint Committee shall consist of ~~six~~ ten sitting members of the General Assembly. ~~Three~~ Five shall be appointed by the President Pro Tempore of the Senate from the membership of the Senate and ~~three~~ five shall be appointed by the Speaker of the House of Representatives from the membership of the House. Members will serve at the pleasure of their appointing officer and any vacancies occurring on the Joint Committee shall be filled by the appointing officer of the appropriate house. The President Pro Tempore of the Senate shall designate one Senator to serve as cochairman and the Speaker of the House of Representatives shall designate one Representative to serve as cochairman. A quorum shall consist of ~~four~~ six members."

PART XXI.-----STATE GOVERNMENT REORGANIZATION AND PRIVATIZATION (Morgan, Daughtry, Hoyle)

**Sec. 21.1.** (a) The State Government Reorganization and Privatization Study Commission is created. The Commission shall consist of the following 12 members:

- (1) Four Senators and two members from the private sector appointed by the President Pro Tempore of the Senate.
- (2) Four members of the House of Representatives and two members from the private sector appointed by the Speaker of the House of Representatives.

(b) In order to provide for a public-private partnership in examining State government reorganization and privatization, the President Pro Tempore of the Senate shall designate one Senator and one member of the private sector as cochairs and the Speaker of the House of Representatives shall designate one Representative and one member of the private sector as cochairs. When a vacancy occurs in the membership of the Commission the vacancy shall be filled by the same appointing officer who made the initial appointment. Persons registered as lobbyists under Article 9A of Chapter 120 of the General Statutes may not be appointed to the Commission.

**Sec. 21.2.** The Commission may study the following issues:

- (1) Government reorganization, restructuring, and downsizing.
- (2) Privatization efforts of North Carolina and other jurisdictions and the need for State control of essential services and activities; criteria for determining the scope and methods of privatization.
- (3) State aid to private entities, including, but not limited to, the Biotechnology Center and MCNC.

- (4) Private auxiliary entities connected with State programs, including, but not limited to, the North Carolina Zoological Society.
- (5) Privatization of State services and programs, including, but not limited to, the North Carolina Zoological Park, the North Carolina Aquariums, and the State Ports.
- (6) Outsourcing of State information resource development, operation, and maintenance.
- (7) State expenditures for legal services.
- (8) Outside counsel for the State (S.J.R. 948 - Cochrane).
- (9) Boards and commissions consolidation and abolition (H.B. 677 - Sherrill).
- (10) Other related issues.

**Sec. 21.3.** The Commission may develop, among other proposals, a plan for the orderly privatization of designated services and functions.

**Sec. 21.4.** The Commission shall submit a final report of its findings and recommendations to the 1997 General Assembly by filing the report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives on or before January 15, 1997. The Commission may also submit an interim report of its findings and recommendations to the 1996 Regular Session of the 1995 General Assembly by filing the report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives on or before May 15, 1996. Upon filing its final report to the 1997 General Assembly, the Commission shall terminate.

**Sec. 21.5.** The Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs. With the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building.

**Sec. 21.6.** Members of the Commission shall receive per diem, subsistence and travel expenses at the rates authorized by law.

**Sec. 21.7.** The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Legislative Services Commission, through the Legislative Administrative Officer, shall assign professional staff to assist in the work of the Commission. The House of Representatives' and the Senate's Supervisor of Clerks shall assign clerical staff to the Commission, upon the direction of the Legislative Services Commission. The expenses relating to clerical employees shall be borne by the Commission.

**Sec. 21.8.** Upon request by the Commission or its staff, a State department or agency, a local government, or a subdivision of either shall furnish the Commission with any information in its possession or available to it.

**Sec. 21.9.** The Legislative Services Commission may allocate funds to the Commission for the study authorized under this Part.

**PART XXII.-----LEGISLATIVE STUDY COMMISSION ON WETLANDS**  
(S.B. 824 - Hoyle; H.B. 886 - Nichols)



**Sec. 22.1.** (a) There is established the Legislative Study Commission on Wetlands. The Commission shall consist of 16 members appointed as follows:

- (1) Four members of the House of Representatives appointed by the Speaker of the House of Representatives;
- (2) Four Senators appointed by the President Pro Tempore of the Senate;
- (3) Two environmentalists, one appointed by the Speaker of the House of Representatives and one appointed by the President Pro Tempore of the Senate;
- (4) Four persons representing the business community, two appointed by the Speaker of the House of Representatives and two appointed by the President Pro Tempore of the Senate;
- (5) One person representing the commercial fishing industry appointed by the President Pro Tempore of the Senate;
- (6) One scientist appointed by the Speaker of the House of Representatives.

(b) The Speaker of the House of Representatives shall designate one Representative as cochair and the President Pro Tempore of the Senate shall designate one Senator as cochair.

(c) The Commission shall study the current wetlands regulatory program including the need to develop a statewide wetlands restoration and mitigation program and mitigation bank. In making its recommendations, the Commission shall balance the need to provide effective rulemaking to protect wetlands with the need to encourage real estate and commercial development of property to enhance the State's economy. This evaluation shall include a review of current wetlands rules and regulations and an assessment of any necessary changes that should be made in exchange for participation in a statewide mitigation bank. The Commission may include in its recommendations, legislation to streamline the regulatory process, mitigation ratios and exemptions from mitigation, a coordinated program for wetlands restoration and enhancement, a Wetlands Mitigation Bank and Restoration Fund, funding for the mitigation bank, and any other issue relating to wetlands.

(d) The Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building.

(e) Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1 or G.S. 138-5, as appropriate.

(f) The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Legislative Services Commission, through the Legislative Administrative Officer, shall assign professional staff to assist in the work of the Commission. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission, upon the direction of the Legislative Services

Commission. The expenses relating to clerical employees shall be borne by the Commission.

(g) When a vacancy occurs in the membership of the Commission, the vacancy shall be filled by the same appointing officer who made the initial appointment.

(h) The Commission shall make its recommendations and final report to the 1995 General Assembly, Regular Session 1996. Upon filing its report, the Commission shall terminate.

#### PART XXIII.-----WELFARE REFORM STUDY COMMISSION CHANGES

Sec. 23.1. Subsection (a) of Section 47 of Chapter 24, 1993 Session Laws, Extra Session 1994, as continued by Section 23.8B(a) of Chapter 507 of the 1995 Session Laws, reads as rewritten:

"(a) There is created the Legislative Study Commission on Welfare Reform. The Commission shall consist of ~~44~~ 12 members as follows:

- (1) ~~Five~~ Six members of the House of Representatives appointed by the Speaker of the House of Representatives; and
- (2) ~~Two persons appointed by the Speaker of the House of Representatives who are not members of the General Assembly;~~
- (2) (3) ~~Five~~ Six Senators appointed by the President Pro Tempore of the Senate; and Senate.
- (4) ~~Two persons appointed by the President Pro Tempore of the Senate who are not members of the General Assembly."~~

Sec. 23.2. Subsection (g) of Section 47 of Chapter 24, 1993 Session Laws, Extra Session 1994, as continued by Section 23.8B(a) of Chapter 507 of the 1995 Session Laws, reads as rewritten:

"(g) Members of the Commission shall receive subsistence and travel expenses at the rates set forth in ~~G.S. 120-3.1 or G.S. 138-5, as appropriate, G.S. 120-3.1."~~

#### PART XXIV.----- JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS MEMBERSHIP

Sec. 24.1. (a) G.S. 120-74 reads as rewritten:

"§ 120-74. *Appointment of members; terms of office.*

The Commission shall consist of ~~22~~ 26 members. The President pro tempore of the Senate, the Speaker pro tempore of the House, and the Majority Leader of the Senate and the Speaker of the House shall serve as ex officio members of the Commission. The Speaker of the House of Representatives shall appoint ~~nine~~ eleven members from the House. The President pro tempore of the Senate shall appoint ~~nine~~ eleven members from the Senate. Vacancies created by resignation or otherwise shall be filled by the original appointing authority. Members shall serve two-year terms beginning and ending on January 15 of the odd-numbered years, except that initial appointments shall begin on July 1, 1975. Members shall not be disqualified from completing a term of service on the Commission because they fail to run or are defeated for reelection. Resignation or removal from the General Assembly shall constitute resignation or removal from

membership on the Commission. The terms of the initial members of the Commission shall expire January 15, 1977."

(b) Appointees to the new positions created under this section shall serve initial terms beginning on the date of their appointment and ending January 15, 1997.

#### PART XXV.-----BUDGET TECHNICAL CORRECTIONS HEALTHY START FUNDS

Sec. 25.1. Section 26.4 of Chapter 507 of the 1995 Session Laws reads as rewritten:

"Sec. 26.4. Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, the sum of two hundred thousand dollars (\$200,000) for the 1995-96 fiscal year shall be allocated to the North Carolina Healthy Start Foundation to support the programs and activities of the Governor's Commission on Reduction of Infant Mortality. Funds allocated pursuant to this section shall be expended first to support statewide planning, promotion, and coordination for the First Step Campaign. Funds remaining after allocation for First Step shall be used to support other programs and activities. The Healthy Start Foundation shall report on all of its programs to the Joint Legislative Commission on Governmental Operations on or before March 1, 1996. The report shall include information on the Foundation's activities and accomplishments during the past fiscal year, a list of the groups, organizations, communities, and other recipients of assistance from the Foundation in the last 12 months, itemized expenditures during the past fiscal year with sources of funding, planned activities, and accomplishments for at least the next 12 months, and itemized anticipated expenditures with sources of funding for the next 12 months.

In the event that the North Carolina Healthy Start Foundation fails or is unable to perform the services and activities required under this section, then the funds authorized for allocation pursuant to this section shall revert to the General Fund."

#### TECHNICAL CORRECTION/CRIMINAL HISTORY CHECKS

Sec. 25.2. G.S 110-90.2(g), as enacted by subsection (a) of Section 23.25 of Chapter 507 of the 1995 Session Laws, reads as rewritten:

"(g) The child day care provider who seeks to be employed in child day care and the child day care provider who seeks to own or operate child day care shall pay the cost of the fingerprinting and the local check at the time the child day care provider seeks to provide child day care. The Department of Justice shall perform the State criminal history check. ~~The Department of Human Resources shall bear the costs of obtaining the State criminal history check.~~ If the Department determines that a day care provider who has lived continuously in the State less than five years is not disqualified based on the local and State criminal history record check, the Department shall request a criminal history check from the National Repository of Criminal History from the Department of Justice. The Department of Human Resources shall pay the cost for the national criminal history record check."

## CLERKS OF COURT EQUIPMENT FUNDS.

**Sec. 25.3.** Section 27.10A1 of Chapter 507 of the 1995 Session Laws is amended by adding a new subdivision to read:

"(9a) Up to \$2,000,000 to the Judicial Department for equipment replacement."

## CAPITAL BUDGET CLARIFICATIONS

**Sec. 25.4.** Entries 19 through 22 on the chart of Section 26A.1 of Chapter 507 of the 1995 Session Laws read as rewritten:

"19. State Parks System -			
Construction, <u>land</u>			
acquisition, repairs			
and renovations	10,000,000		
20. North Carolina Aquariums			
Planning	300,000	1,000,000	
21. <del>Museum of Natural Science</del>			
<u>Sciences - Exhibits Planning</u>			
and Design	400,000		
22. Water Resources			
<u>Development Projects</u>	2,065,000"		

## PART XXVI.-----EFFECTIVE DATE

**Sec. 26.1.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 202

## CHAPTER 543

## AN ACT TO ENCOURAGE THE COMPOSTING OF POULTRY CARCASSES AND PROVIDE AN INCOME TAX CREDIT FOR POULTRY COMPOSTING FACILITIES.

*The General Assembly of North Carolina enacts:*

**Section 1.** Division II of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-151.25. Credit for construction of a poultry composting facility.

(a) Credit. -- A taxpayer or Subchapter S corporation who constructs in this State a poultry composting facility as defined in G.S. 106-549.51 for the composting of whole, unprocessed poultry carcasses from commercial operations in which poultry is raised or produced is allowed as a credit against the tax imposed by this Division an amount equal to twenty-five percent (25%) of the installation, materials, and equipment costs of construction paid during the taxable year. This credit may not exceed one thousand dollars (\$1,000) for any single installation. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except payments of tax by or on behalf of the taxpayer. The credit allowed by this section does not apply to costs paid with funds provided the taxpayer by a State or federal agency.



(b) Property Owned by the Entirety. -- In the case of property owned by the entirety, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return."

Sec. 2. G.S. 106-549.70 reads as rewritten:

"§ 106-549.70. Disposal pit or incinerator, pit, incinerator, or poultry composting facility required.

Every person, firm or corporation engaged in ~~growing poultry, turkeys or other domestic fowl or products thereof~~ raising or producing poultry for commercial purposes shall provide and maintain a disposal ~~pit or incinerator~~ pit, incinerator, or poultry composting facility of a size and design, approved by the Department of Agriculture, ~~wherein in which~~ all dead ~~diseased~~ poultry carcasses are disposed. ~~shall be disposed of in a manner to prevent the spread of disease; provided, that the provisions of this Article shall~~ This section does not apply to ~~growers of poultry, turkeys or other domestic fowl~~ poultry producers with flocks of 200 or less. The definitions provided in Article 49D of this Chapter apply in this Article."

Sec. 3. G.S. 106-549.51 is amended by adding a new subdivision to read:

"(25a) 'Poultry composting facility' means a structure or enclosure in which whole, unprocessed poultry carcasses are decomposed by a natural process into an organic, biologically safe by-product that can be used for plant food."

Sec. 4. Section 1 of this act becomes effective for taxable years beginning on or after January 1, 1995, and expires for taxable years beginning on or after January 1, 1998. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 974

## CHAPTER 544

### AN ACT TO REQUIRE A PERSON WHO PERFORMS THE LAND APPLICATION OF ANIMAL WASTE FROM SWINE PRODUCTION TO BE CERTIFIED.

*The General Assembly of North Carolina enacts:*

Section 1. Article 21 of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 9A. Application of Animal Waste.

"§ 143-215.74C. Definitions.

As used in this Part:

- (1) 'Animal waste' means liquid residuals, resulting from the raising of swine (*Sus scrofa*), that are collected, treated, stored, or applied to the land through an animal waste management system.
- (2) 'Animal waste management system' means a combination of structural and nonstructural practices that will properly collect,

treat, store, or apply animal waste to the land such that no discharge of pollutants occurs to surface waters of the State by any means except as a result of a storm event more severe than the 25-year, 24-hour storm. For purposes of this Part, 'animal waste management system' means a system that is designed to manage and that actually serves more than 250 swine (*Sus scrofa*).

- (3) 'Application' means laying, spreading on, irrigating, or injecting animal waste onto land.
- (4) 'Owner' means the person who owns or controls the land used for agricultural purposes or the person's lessee or designee.
- (5) 'Operator in charge' means a person who holds a currently valid certificate to operate an animal waste management system and who has primary responsibility for the operation of the system.

"§ 143-215.74D. Purpose; animal waste management required; certified operators required.

(a) The purpose of this Part is to reduce nonpoint source pollution in order to protect the public health and to conserve and protect the quality of the State's water resources and to encourage the development and improvement of the State's agricultural land for the production of food and other agricultural products.

(b) Animal waste subject to this Part shall be managed so that the application of the waste does not cause a discharge of pollutants to the surface waters of the State, except as a result of a storm event more severe than a 25-year, 24-hour storm.

(c) Only an operator in charge or a person under the supervision of an operator in charge may apply animal waste to the land. The owner or other person in control of the land used for the swine production is responsible for ensuring that the application is performed by an operator in charge or person under the supervision of an operator in charge.

(d) This Part is not intended to supplant any permit otherwise required to be obtained from the Department for the discharge of an animal waste.

"§ 143-215.74E. Qualifications for operators of animal waste management systems; issuance of certificates.

(a) The Department, in cooperation with the Cooperative Extension Service, shall develop and administer a training and certification program for the operator in charge of an animal waste management system. Each applicant shall complete six hours of instruction on the operation of animal waste management systems. The Department shall issue a certificate as an operator in charge to a person who completes the instructional requirements established by this subsection, demonstrates competence in the operation of animal waste management systems by passing an appropriate examination, and pays a ten dollar (\$10.00) fee.

(b) The certificate shall be renewed annually, provided that the training and examination requirements established under subsection (a) of this section shall be completed at least once every five years. The annual renewal fee shall be ten dollars (\$10.00).

(c) In addition to other penalties authorized by law, the Department may assess a civil penalty of up to one thousand dollars (\$1,000) against a person who violates this Part and, in accordance with the procedure set forth in

Chapter 150B of the General Statutes, may suspend or revoke a certificate or may issue a written reprimand to an operator in charge if it finds that the operator in charge has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator in charge is incompetent or unable to properly perform his duties.

(d) The Department shall adopt rules to implement this Part."

Sec. 2. G.S. 143-215.74E(d), as enacted by Section 1 of this act, is effective upon ratification. All other provisions of this act become effective 1 January 1997.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 53

## CHAPTER 545

### AN ACT TO REQUIRE THE REGISTRATION OF PERSONS CONVICTED OF CERTAIN CRIMINAL SEXUAL OFFENSES.

*The General Assembly of North Carolina enacts:*

Section 1. Subchapter VII of Chapter 14 of the General Statutes is amended by adding a new Article to read:

#### "ARTICLE 27A.

#### "Sexual Offender Registration Program.

##### "§ 14-208.5. Purpose.

The General Assembly recognizes that sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is of paramount governmental interest. Further, the General Assembly recognizes that local law enforcement officers' efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the agency's jurisdiction. Release of information about sex offenders will further the governmental interests of public safety so long as the information released is rationally related to the furtherance of those goals.

Therefore, it is the purpose of this Article to assist local law enforcement agencies' efforts to protect their communities by requiring sex offenders to register with local law enforcement agencies and to require the exchange of relevant information about sex offenders among law enforcement agencies and to authorize the access to necessary and relevant information about sex offenders to others as provided in this Article.

##### "§ 14-208.6. Definitions.

The following definitions apply in this Article:

- (1) 'Division' means the Division of Criminal Statistics of the Department of Justice.
- (2) 'Penal institution' means a detention facility operated under the jurisdiction of the Division of Prisons of the Department of Correction, or a county jail.
- (3) 'Release' means discharged or paroled.

## (4) 'Reportable conviction' means:

- a. A final conviction for violation of G.S. 14-27.2 (first degree rape), 14-27.3 (second degree rape), 14-27.4 (first degree sexual offense), 14-27.5 (second degree sexual offense), 14-27.6 (attempted rape or sexual offense), 14-27.7 (intercourse and sexual offense with certain victims), 14-178 (incest between near relatives), 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), 14-190.16 (first degree sexual exploitation of a minor), 14-190.17 (second degree sexual exploitation of a minor), 14-190.17A (third degree sexual exploitation of a minor), 14-190.18 (promoting prostitution of a minor), 14-190.19 (participating in prostitution of a minor), or 14-202.1 (taking indecent liberties with children).
- b. A final conviction in another state of an offense, which if committed in this State, would have been a sex offense as defined by the sections of the General Statutes set forth in paragraph a. of this subdivision.

## (4) 'Sheriff' means the sheriff of a county in this State.

"§ 14-208.7. Registration.

(a) A person who is a resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides. If the person moves to North Carolina from outside this State, the person shall register within 10 days of establishing residence in this State. If the person is a current resident of North Carolina, the person shall register:

- (1) Within 10 days of release from a penal institution or arrival in a county to live outside a penal institution; or
- (2) Immediately upon conviction for a reportable offense where an active term of imprisonment was not imposed.

Registration shall be maintained for a period of 10 years following release from a penal institution. If no active term of imprisonment was imposed, registration shall be maintained for a period of 10 years following each conviction for a reportable offense.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article. The registration form shall require:

- (1) The person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, drivers license number, and home address;
- (2) The type of offense for which the person was convicted, the date of conviction, and the sentence imposed;
- (3) A current photograph; and
- (4) The person's fingerprints.

The sheriff shall photograph the individual at the time of registration and take fingerprints from the individual at the time of registration both of which will be kept as part of the registration form. The registrant will not be required to pay any fees for the photograph or fingerprints taken at the time of registration.



(c) Not later than the third day after a person registers, the sheriff with whom the person registered shall send the registration information to the Division in a manner determined by the Division. The sheriff shall retain the original registration form and other information collected.

"§ 14-208.8. Prerelease notification.

(a) At least 10 days, but not earlier than 30 days, before a person who will be subject to registration under this Article is due to be released from a penal institution, an official of the penal institution shall:

- (1) Inform the person of the person's duty to register under this Article and require the person to sign a written statement that the person was so informed or, if the person refuses to sign the statement, certify that the person was so informed;
- (2) Obtain the registration information required under G.S. 14-208.7(b)(1) and (2), as well as the address where the person expects to reside upon the person's release; and
- (3) Send the Division and the sheriff of the county in which the person expects to reside the information collected in accordance with subdivision (2) of this subsection.

(b) If a person who is subject to registration under this Article does not receive an active term of imprisonment, the court pronouncing sentence shall conduct, at the time of sentencing, the notification procedures specified in subsection (a) of this section.

"§ 14-208.9. Change of address.

If a person required to register changes address, the person shall provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. Not later than the third day after receipt of the notice, the sheriff shall forward this information to the Division. If the person moves to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

"§ 14-208.10. Access to registration information.

(a) To obtain information concerning an individual's registration status, a requester shall submit to the sheriff the following:

- (1) The individual's name and sex;
- (2) A physical description of the individual; and
- (3) Any other relevant information known to the requester concerning the individual.

Upon receipt of the information, the sheriff shall verify, in writing, to the requester whether the individual has registered as a sex offender in this State, the date of conviction, and the offenses for which registration was required. The registration information and the corresponding registry is a public record and shall be available for public inspection. The sheriff shall upon request, display any photograph provided in compliance with G.S. 14-208.7(b)(3); however, the sheriff shall not provide or allow a copy to be made of the photograph.

(b) Any person may obtain a copy of an individual's registration form, excluding the photograph, upon payment to the sheriff of a reasonable fee for the costs of duplicating the form.

(c) The sheriff of each county is authorized, upon written request, to provide a copy of the entire registry to any group, entity, organization, corporation, or school, that utilizes volunteers or employees in working with, caring for, supervising or protecting children or disabled or elderly persons. The sheriff may charge a reasonable fee for duplicating costs and for mailing costs when appropriate."

"§ 14-208.11. Failure to register.

(a) A person required by this Article to register who, knowingly and with the intent to violate the provisions of this Article, fails to register shall be guilty of a Class 3 misdemeanor for a first conviction of a violation of this Article, and a Class I felony for a subsequent conviction of a violation of this Article.

(b) Before a person convicted of a violation of this Article is due to be released from a penal institution, an official of the penal institution shall conduct the prerelease notification procedures specified under G.S. 14-208.8(a)(2) and (3). If upon a conviction for a violation of this Article, no active term of imprisonment is imposed, the court pronouncing sentence shall, at the time of sentencing, conduct the notification procedures specified under G.S. 14-208.8(a)(2) and (3).

"§ 14-208.12. Exemption.

(a) A person who has a reportable conviction may petition the superior court in the county where the person resides for an exemption from this Article. The person shall serve a copy of the petition on the district attorney. If the person shows for good cause, by clear and convincing evidence, that registration will not serve any useful purpose, the court shall grant the exemption.

(b) When a registered person presents the sheriff with a certified copy of the court order showing that an exemption has been granted, the sheriff shall remove any information from his records that was obtained pursuant to this Article. The sheriff shall then notify the Division of the exemption by sending a copy of the exemption to the Division within three days and the Division shall remove any information from its files obtained pursuant to this Article. The Division shall notify the registered person of the exemption by letter telling the registrant that the exemption has been accomplished.

"§ 14-208.13. File with Police Information Network.

(a) The Division shall include the registration information in the Police Information Network as set forth in G.S. 114-10.1.

(b) Except as provided in G.S. 14-208.12(b), the Division shall maintain the registration information permanently even after the registrant's reporting requirement expires."

Sec. 2. G.S. 114-10 reads as rewritten:

"§ 114-10. Division of Criminal Statistics.

The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Criminal Statistics. There shall be assigned to this Division by the Attorney General duties as follows:

- (1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and

sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

- (2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the State. This information may include, but is not limited to, motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, sexual offender registration as provided under Article 27A of Chapter 14 of the General Statutes, drugs, drug users and parole and probation histories. In performing this function, the Division may arrange to use information available in other agencies and units of State, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.
- (3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.
- (4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.
- (5) To perform such other duties as may be from time to time prescribed by the Attorney General.
- (6) To promulgate rules and regulations for the administration of this Article."

Sec. 3. Sections 1 and 2 of this act become effective January 1, 1996, and are applicable to all persons convicted on or after that date, and to all persons released from a penal institution on or after that date. This act shall be known as the "Amy Jackson Law".

In the General Assembly read three times and ratified this the 29th day of July, 1995.

S.B. 873

## CHAPTER 546

### AN ACT TO CLARIFY AND SIMPLIFY THE PUBLIC NOTICE REQUIREMENTS FOR THE REZONING OF PROPERTY.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 160A-384 reads as rewritten:

*"§ 160A-384. Method of procedure.*

(a) The city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. The procedures adopted pursuant to this section shall provide that whenever there is a zoning ~~classification action involving a parcel of land, map amendment~~, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed classification amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the City Council that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required in the following situations:

- (1) ~~The total rezoning of all property within the corporate boundaries of a municipality unless rezoning involves zoning of parcels of land to less intense or more restrictive uses. If rezoning involves zoning of parcels of land to less intense or more restrictive uses, notification to owners of these parcels shall be made by mail in accordance with subsection (a) of this section;~~
- (2) ~~The zoning is an initial zoning of the entire zoning jurisdiction area;~~
- (3) ~~The zoning reclassification action directly affects more than 50 properties, owned by a total of at least 50 different property owners;~~
- (4) ~~The reclassification is an amendment to the zoning text; or~~
- (5) ~~The city is adopting a water supply watershed protection program as required by G.S. 143-214.5.~~

In any case where this subsection eliminates the notice required by subsection (a) of this section, a city shall if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, a city may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish once a week for four successive calendar weeks in a newspaper having general circulation in the area maps showing an advertisement of the public hearing that shows the boundaries of the area affected by the proposed ordinance or amendment, zoning map amendment and explains the nature of the proposed change. The final two advertisements shall comply with and be deemed to satisfy the provisions of G.S. 160A-364. The map advertisement shall not be less than one-half of a newspaper page in size. The notice advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the city's jurisdiction or outside of the newspaper circulation area,



according to the address listed on the most recent property tax listing for the affected property, shall be notified by first class mail pursuant to this section. The person or persons mailing the notices shall certify to the city council that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, a city shall post one or more prominent signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning."

Sec. 2. G.S. 153A-343 reads as rewritten:

"§ 153A-343. *Method of procedure.*

(a) The board of commissioners shall, in accordance with the provisions of this Article, provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. The procedures adopted pursuant to this section shall provide that whenever there is a zoning ~~classification action involving a parcel of land,~~ map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed classification amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the Board of Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required in the following situations:

- (1) ~~The total rezoning of all property within the boundaries of a county or a zoning area as defined in G.S. 153A-342 unless rezoning involves zoning of parcels of land to less intense or more restrictive uses. If rezoning involves zoning of parcels of land to less intense or more restrictive uses, notification to owners of these parcels shall be made by mail in accordance with subsection (a) of this section;~~
- (2) ~~The zoning is an initial zoning of the entire zoning jurisdiction area;~~
- (3) ~~The zoning reclassification action directly affects more than 50 properties, owned by a total of at least 50 different property owners;~~
- (4) ~~The reclassification is an amendment to the zoning text; or~~
- (5) ~~The county is adopting a water supply watershed protection program as required by G.S. 143-214.5.~~

In any case where this subsection eliminates the notice required by subsection (a) of this section, a county shall if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the county elects to use the expanded published notice provided for in this subsection. In this instance, a county may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish once a week for four successive calendar weeks in a newspaper having general circulation in the

area maps showing an advertisement of the public hearing that shows the boundaries of the area affected by the proposed ordinance or amendment, zoning map amendment and explains the nature of the proposed change. The final two advertisements shall comply with and be deemed to satisfy the provisions of G.S. 153A-323. The map advertisement shall not be less than one-half of a newspaper page in size. The notice advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the county's jurisdiction or outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by first class mail pursuant to this section. The person or persons mailing the notices shall certify to the board of commissioners that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, a county shall post one or more prominent signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning.

(c) The provisions of this section shall not be applicable to any zoning map adoption that initially zones property added to the territorial coverage of the ordinance."

**Sec. 2.1.** Any local act in conflict with this act is repealed to the extent of the conflict.

**Sec. 3.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1995.



## RESOLUTIONS

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S.J.R. 2

### RESOLUTION 1

A JOINT RESOLUTION INFORMING HIS EXCELLENCY, GOVERNOR JAMES B. HUNT, JR., THAT THE GENERAL ASSEMBLY IS ORGANIZED AND READY TO PROCEED WITH PUBLIC BUSINESS AND INVITING THE GOVERNOR TO ADDRESS A JOINT SESSION OF THE SENATE AND HOUSE OF REPRESENTATIVES.

*Be it resolved by the Senate, the House of Representatives concurring:*

**Section 1.** A committee of five Senators appointed by the President Pro Tempore of the Senate and five Representatives appointed by the Speaker shall notify His Excellency, Governor James B. Hunt, Jr., that the General Assembly is organized and is ready to proceed with public business, and to invite him to address a joint session of the Senate and House of Representatives in the Hall of the House of Representatives at 12:00 noon, Thursday, February 9, 1995.

**Sec. 2.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of February, 1995.

H.J. R. 91

### RESOLUTION 2

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF HAL D. LINGERFELT AS COMMISSIONER OF BANKS.

Whereas, under the provisions of G.S. 53-92, appointment by the Governor of the Commissioner of Banks is subject to confirmation by the General Assembly by joint resolution; and

Whereas, the present Commissioner of Banks has resigned, effective January 9, 1995, or when his successor is confirmed; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the name of his appointee to fill the term of Commissioner of Banks;



*Now, therefore, be it resolved by the House of Representatives, the Senate concurring:*

**Section 1.** The appointment of Hal D. Lingerfelt as Commissioner of Banks for the remainder of the term expiring March 31, 1995, is confirmed.

**Sec. 2.** The appointment of Hal D. Lingerfelt as Commissioner of Banks for a term to expire March 31, 1999, is confirmed.

**Sec. 3.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of February, 1995.

S.J.R. 225

### RESOLUTION 3

A JOINT RESOLUTION INVITING THE HONORABLE BURLEY B. MITCHELL, JR., CHIEF JUSTICE OF THE SUPREME COURT, TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE.

*Be it resolved by the Senate, the House of Representatives concurring:*

**Section 1.** The Honorable Burley B. Mitchell, Jr., Chief Justice of the Supreme Court, is invited to address a joint session of the House of Representatives and the Senate in the Hall of the House of Representatives at 3:00 p.m., Tuesday, March 21, 1995.

**Sec. 2.** The Secretary of State shall transmit a certified copy of this resolution to Burley B. Mitchell, Jr.

**Sec. 3.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of March, 1995.

S.J.R. 236

### RESOLUTION 4

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF SENATOR JOHN BONNELL CODINGTON, MD.

Whereas, Dr. John Bonnell Codington was born in Wilmington, North Carolina on October 27, 1925, to Herbert A. Codington and Jessie Peck Codington; and

Whereas, Dr. John Bonnell Codington graduated from Davidson College in 1949, and from the University of Maryland School of Medicine in 1953; and

Whereas, Dr. John Bonnell Codington spent most of his life in his native Wilmington and contributed greatly to the quality of its life; and

Whereas, until his retirement in 1990, Dr. John Bonnell Codington practiced general surgery for 32 years at James Walker, New Hanover, and Cape Fear Memorial hospitals; and

Whereas, Dr. John Bonnell Codington was active throughout his life in civic and community affairs, serving as a member of the New Hanover County Board of Education, as a member of the Board of Trustees of the

University of North Carolina at Wilmington, and as a member of the Board of Trustees of Champion McDowell Davis Charitable Foundation; and

Whereas, Dr. John Bonnell Codington was elected to the State Senate in 1993, where he served on several committees including the Appropriations Subcommittee on General Government, Children and Human Resources, Insurance, Judiciary I, and Ways and Means; and

Whereas, Dr. John Bonnell Codington was a veteran of World War II, serving his country from 1943 to 1946; and

Whereas, Dr. John Bonnell Codington was awarded the Civil Rights Award in 1983, and was honored as Professor of the Year in 1985; and

Whereas, Dr. John Bonnell Codington was a life-long member of the First Presbyterian Church, where he served as ruling elder; and

Whereas, for more than 15 years, Dr. John Bonnell Codington gave freely of his time and energy as a medical missionary in Leogane, Haiti, treating the sick and teaching surgical techniques to local doctors; and

Whereas, Dr. John Bonnell Codington, citizen of North Carolina, died on March 1, 1994, bringing to an end his meaningful and illustrative life; and

Whereas, Dr. John Bonnell Codington is survived by his wife, Elizabeth Carter Codington; his daughters, Elizabeth Codington Reid and Anne Codington Autrey; his son, John Bonnell Codington, Jr.; and five grandchildren; and

Whereas, it is the desire of the General Assembly to duly recognize Dr. John Bonnell Codington's service and pay tribute to his life;

*Now, therefore, be it resolved by the Senate, the House of Representatives concurring:*

**Section 1.** The General Assembly honors the memory of Dr. John Bonnell Codington and expresses the gratitude and appreciation of this State and its citizens for his life and service to his community and to North Carolina.

**Sec. 2.** The General Assembly expresses its deepest sorrow to the family and friends of Dr. John Bonnell Codington for the loss of a beloved husband, father, grandfather, and a true friend.

**Sec. 3.** The Secretary of State shall transmit a certified copy of this resolution to the family of Dr. John Bonnell Codington.

**Sec. 4.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of March, 1995.

H.J.R. 501

## RESOLUTION 5

**A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF THE LATE JAMES MARSHALL HALL, FORMER MEMBER OF THE GENERAL ASSEMBLY.**

Whereas, James Marshall Hall was born in King on August 6, 1922, one of three children of Raleigh F. Hall and Hattie Fowler Hall; and

Whereas, James Marshall Hall graduated from King High School in 1940; and

Whereas, James Marshall Hall was a veteran of the United States Army, serving his country during World War II from 1942 to 1946; and

Whereas, James Marshall Hall had several vocations; he engaged in farming, served as an insurance agent for 18 years, and worked for the Division of Motor Vehicles for seven years; and

Whereas, James Marshall Hall married Melba Covington Hall on January 24, 1946, and they had three children, Barry, Bruce, and Emily Hall; and

Whereas, James Marshall Hall devoted 38 years of his life to little league baseball, enriching the lives of many young children in his community; and

Whereas, for a number of years, James Marshall Hall served as President of King Little League Baseball, as President of the North Carolina Little League Baseball Association, as a member of the Southern Region Tournament Advisory Board for Little League Baseball, and as District Administrator of Little League Baseball, Inc.; and

Whereas, James Marshall Hall was active in the American Legion and was a member of the King Lions Club, of which he served as treasurer from 1968 to 1972; and

Whereas, James Marshall Hall was an active member of the Republican Party; and

Whereas, James Marshall Hall represented Stokes County with distinction as a member of the House of Representatives during the 1973 and 1985 Sessions of the General Assembly; and

Whereas, James Marshall Hall was a member of the Mount Olive Baptist Church in King; and

Whereas, James Marshall Hall will be remembered by all who knew him as a loving and devoted family man; and

Whereas, James Marshall Hall died on July 7, 1994; and

Whereas, James Marshall Hall is survived by his children, Barry Hall, Bruce Hall, and Emily Southern, four grandchildren, and one great-grandchild;

*Now, therefore, be it resolved by the House of Representatives, the Senate concurring:*

**Section 1.** The General Assembly honors the life and memory of its former member, James Marshall Hall, and expresses its gratitude for his service to the people of North Carolina.

**Sec. 2.** The General Assembly expresses its deep sorrow to the family and friends of James Marshall Hall for the loss of a beloved father, grandfather, and a true friend.

**Sec. 3.** The Secretary of State shall transmit a certified copy of this resolution to the family of James Marshall Hall.

**Sec. 4.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of April, 1995.

**A JOINT RESOLUTION HONORING THE 1993-94 WOMEN'S BASKETBALL TEAM AT THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL FOR WINNING A NATIONAL CHAMPIONSHIP AND HONORING THE MEMORY OF JUNE GALLOWAY AND MIKE MATHESON.**

Whereas, with seven-tenths of a second left on the game clock, a three point basket made by Charlotte Smith of the women's basketball team at the University of North Carolina at Chapel Hill earned the team and Charlotte Smith a place in sports history; and

Whereas, on April 3, 1994, the UNC women defeated Louisiana Tech by a score of 60-59, becoming the 1994 National Collegiate Athletic Association (NCAA) Division I Champions and winning the first national basketball title for the women's basketball program; and

Whereas, the team's 1994 appearance at the NCAA Tournament was its third straight appearance and its eighth overall appearance; and

Whereas, the women's basketball team finished its 1993-94 season with an overall record of 33-2, the most wins ever by a women's basketball team at the University of North Carolina at Chapel Hill; and

Whereas, during the 1993-94 season, the women's basketball team won the Atlantic Coast Conference Championship and finished with a record of 14-2 in the Atlantic Coast Conference; and

Whereas, other accomplishments of the 1993-94 team included a 14-game winning streak, tying the longest record in the school's history; and

Whereas, this championship brings great honor and distinction to the State and deserves recognition; and

Whereas, the success of the UNC women's basketball team reflects a tradition of athletic excellence in basketball that is valued by many North Carolinians; and

Whereas, the success of women's basketball in North Carolina is a fitting testimonial and memorial to great women's basketball coaches of the past, including the late June Galloway, a teacher and coach, who in her last three seasons at the University of North Carolina at Greensboro led the women's basketball team to a record of 38-14, a State championship, and a fourth place finish in the National Invitational Women's Intercollegiate Tournament in 1971, and including the late Mike Matheson, who coached the girls' basketball team at Bandys High School in Catawba County to two consecutive State AA championships in 1987 and 1988; and

*No. , therefore, be it resolved by the House of Representatives, the Senate concurring:*

**Section 1.** The General Assembly expresses the appreciation and admiration of the people of North Carolina to the women's basketball team at the University of North Carolina at Chapel Hill for winning the 1994 National Collegiate Athletic Association Division I Championship.

**Sec. 2.** The General Assembly recognizes the achievements of the 1993-94 team members, Tonya Cooper, Sylvia Crawley, Lori Gear,



**Section 1.** The General Assembly honors the memory of those underage military veterans who gave their lives to protect and defend the United States. The General Assembly further commends the Veterans of Underage Military Service, Inc., for its attempt to locate and assist all underage veterans of the United States Armed Forces.

**Sec. 2.** The Secretary of State shall transmit a certified copy of this resolution to Jack Hoffler, Commander of the North Carolina Chapter of the Veterans of Underage Military Services, Inc.

**Sec. 3.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1995.

S.J.R. 1096

## RESOLUTION 10

### A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF MARY FRANCES POWELL SEYMOUR, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Mary Frances Powell was born in the City of Raleigh, on April 12, 1922, to Robert C. Powell, former City Commissioner of Public Safety, and Annie Rebecca Seymour Powell, a political activist; and

Whereas, Mary Frances Powell was a graduate of Needham B. Broughton High School and Peace College; she also studied at Harvard University, the University of Michigan, the Center for Creative Leadership, and Guilford Technical and Community College; and

Whereas, Mary Frances Powell married Hubert E. Seymour, Jr., on February 3, 1945, and was the mother of two sons; and

Whereas, Mary Frances Powell Seymour worked for the Social Security Administration and the United States Air Force; and was a legal assistant, court reporter, and a licensed real estate broker; and

Whereas, Mary Frances Powell Seymour liked the City of Greensboro so much that she made it her home, becoming very active in the city's civic and governmental affairs; and

Whereas, Mary Frances Powell Seymour was a devoted and lifelong servant of her community and State, serving as a member of the Womens Professional Forum, the O. Henry Woman's Club, the Greensboro Council of Garden Clubs, Inc., the Greensboro Legal Auxiliary, the Chamber of Commerce, the Community Development Council, the Tarheel Trail Girl Scout Council, Inc., the Board of Visitors of Peace College, the Board of Directors of Hayes Taylor YMCA, the North Carolina Arts Council, the North Carolina Parks and Recreation Council, and as honorary member of Business and Professional Women; and

Whereas, as a young child, Mary Frances Powell Seymour was exposed to politics; she lived with her family in the Yarborough House in the City of Raleigh where her father was the manager and where most of the members of the General Assembly stayed while in Session; she assisted her mother in handing out political leaflets for Thad Eure, Sr., who was running for his first term as North Carolina's Secretary of State; and

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Whereas, in 1966, Mary Frances Powell Seymour was elected to the Greensboro City Council, only the second woman ever to win a seat on the city council; she served three additional terms on the city council, and from 1973 to 1975, served as Mayor Pro Tempore; and

Whereas, Mary Frances Powell Seymour was a member of the North Carolina House of Representatives in 1977, 1979, 1981, and 1983, and the North Carolina Senate in 1987, 1991, and 1993, during which tenure she served with honor and distinction and was chair of several committees including Alcoholic Beverage Control, Public Utilities, Libraries, Insurance, and of several subcommittees on Appropriations; and

Whereas, Mary Frances Powell Seymour was a member of the Legislative Services Commission and the Legislative Ethics Committee and was Chair of the Guilford County Legislative Delegation from 1982 to 1984; and

Whereas, Mary Frances Powell Seymour was a member of the North Carolina Law Related Education Committee from 1980 to 1984, the State Transportation Advisory Council from 1981 to 1983, and the Board of Directors of the National Conference of Insurance Legislators from 1981 to 1983; and

Whereas, Mary Frances Powell Seymour received numerous awards and honors including the 1970 Eleanor Roosevelt Award; the Bryant Citizenship Award in 1971; the Chamber of Commerce Dolley Madison Award; Distinguished Alumna, Peace College in 1974; Distinguished Service Award, YWCA in 1975; "Who's Who in Government" in 1975; the North Carolina Bar Association Legislative Recognition in 1980; Distinguished Service Award, North Carolina Public Health Association in 1982; the "Good Sam" Award for Legislation Affecting the Hearing Impaired in 1982; the Community Service Award, Bennett College; the North Carolina Recreation and Parks Legislative Award in 1984; and the Distinguished Women of North Carolina Award, in 1993;

Whereas, Mary Frances Powell Seymour was dedicated in her service to College Park Baptist Church, including her service as a Sunday School teacher for 10 years; and

Whereas, Mary Frances Powell Seymour was diagnosed with pancreatic cancer in 1990, and survived with hospitalization, radiation, and chemotherapy, but at all time kept up with her legislative duties and served her constituency effectively until she died on August 26, 1994, at 72 years of age; and

Whereas, Mary Frances Powell Seymour is survived by her husband, Hubert E. Seymour, Jr., two sons, Commander Hubert E. Seymour, III, (United States Navy, retired), and Dr. Robert Seymour, three grandchildren, and a great-grandchild; and

Whereas, with the death of Mary Frances Powell Seymour, the General Assembly, Guilford County, and the State lost a good friend and colleague and an admired and respected individual; and

Whereas, Mary Frances Powell Seymour will be long remembered for her caring for the needs of her State, its people and institutions, and for her leadership with the tough problems of governing at all levels; she is a role model for many and her life of service is an inspiration for all;

*Now, therefore, be it resolved by the Senate, the House of Representatives concurring:*

**Section 1.** The General Assembly expresses its deep appreciation for the life and the accomplishments of Mary Frances Powell Seymour and for the great service she rendered to the State of North Carolina, Guilford County, and the City of Greensboro.

**Sec. 2.** The General Assembly of North Carolina extends its sympathy to the family of Mary Frances Powell Seymour for the great loss they have suffered.

**Sec. 3.** The Secretary of State shall transmit a certified copy of this resolution to the family of Mary Frances Powell Seymour.

**Sec. 4.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1995.

H.J.R. 987

### RESOLUTION 11

**A JOINT RESOLUTION HONORING THE MEMORY OF FORMER MEMBERS OF THE NORTH CAROLINA STATE DEFENSE MILITIA AND RECOGNIZING THE NORTH CAROLINA STATE DEFENSE MILITIA FOR ITS CONTRIBUTIONS TO THE STATE OF NORTH CAROLINA.**

Whereas, the Constitution and the General Statutes of the State of North Carolina authorize the Governor to raise an organized militia from among the citizens of the State; and

Whereas, the Governor, recognizing the need to provide for a cadre of volunteers to serve the State of North Carolina in the event that the National Guard should be called into federal service or a state of emergency or other State need occur, reestablished the North Carolina State Defense Militia by Executive Order No. 60, dated August 22, 1994, implementing the provisions of the Constitution of the State of North Carolina and Chapter 127A of the General Statutes; and

Whereas, the disasters of Hurricane Hugo, the tornado in King, North Carolina, the deployment of the national guard troops to the Persian Gulf, and the coastal storms, proved the need for a trained organization of volunteers, such as the members of the North Carolina State Defense Militia provided to augment the resources of the State; and

Whereas, the volunteer members of the North Carolina State Defense Militia have provided long and exemplary hours of assistance and service during critical times in the history of the State; and

Whereas, the State is deeply indebted to former members of the North Carolina State Defense Militia, many of whom volunteered during world wars and during other periods of emergency; and

Whereas, it is only fitting that the General Assembly pay tribute to the North Carolina State Defense Militia for its great service to the State;

*Now, therefore, be it resolved by the House of Representatives, the Senate concurring:*

**Section 1.** The General Assembly honors the memory of former citizen-soldiers who volunteered for the North Carolina State Defense Militia.

**Sec. 2.** The General Assembly honors the efforts and assistance of the members of the North Carolina State Defense Militia and expresses its appreciation for the service that the members of the North Carolina State Defense Militia have rendered to their respective communities, counties, and to the State of North Carolina. The General Assembly further extends its desire that the North Carolina State Defense Militia continue to provide services to the State, counties, cities, townships, and communities in the highest traditions of volunteer citizen-soldiers.

**Sec. 3.** The Secretary of State shall transmit a certified copy of this resolution to the Office of the Commanding General of the North Carolina State Defense Militia.

**Sec. 4.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1995.

S.J.R. 515

## RESOLUTION 12

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF  
FRANKLIN "FRANK" W. HOWEY, SR., OF UNION COUNTY.

Whereas, Franklin "Frank" W. Howey, Sr., was born on August 31, 1932, to Roscoe Wyette Howey and Rebecca Penegar Howey; and

Whereas, Frank Howey, Sr., graduated from Mineral Springs High School in 1950, and attended the Agriculture Short Course at North Carolina State University; and

Whereas, after graduating from high school, Frank Howey, Sr., began to farm in Union County becoming the eighth generation farmer in his family; and

Whereas, Frank Howey, Sr., was married to Anna Lee P. Howey and was the father of Sarah Ann Howey Dietrich, Sylvia Rebecca Howey Byrd, and Franklin "Frank" Wyette Howey, Jr.; and

Whereas, Frank Howey, Sr., was a member of numerous professional organizations including the Wesley Chapel Agri-business Club, the Union County Cattleman's Association, and the North Carolina Cattleman's Association; and

Whereas, Frank Howey, Sr., held many positions in several organizations, serving as an Executive Board Member of the North Carolina Soybean Association, as Director and Secretary/Treasurer of the Union County Farm Bureau, as Chair of the Union County Southern States Advisory Board, as Director of ASCS County Committee, and as a member of the Union County Chamber of Commerce; and

Whereas, Frank Howey, Sr., was concerned about the quality of education in his community and served as a member of the Union County School Board for 12 years, four of which he served as vice-chair, and served as past chair of the Union County School Board Policy, Land, and Budget Committees; and



Whereas, Frank Howey, Sr., was honored with the Meritorious Service Award from the Soybean Producers Association in 1994, an Advance Certificate of Achievement from the North Carolina School Board Association in 1987, a Vocational Plaque for Outstanding Service to Vocational Education in 1988, and a plaque for Outstanding Service to the Union County School Board in 1988; and

Whereas, Frank Howey, Sr., was active in the Central United Methodist Church in Monroe, serving as an administrative board member; and

Whereas, Frank Howey, Sr., served as associate trustee of the Pleasant Grove Campground and served on the Union County 4-H Advisory Board; and

Whereas, Frank Howey, Sr., was proud of the achievements of all of his children including that his son became the ninth generation farmer in their family; and

Whereas, Frank Howey, Jr., won the Young Farmer and Rancher Achievement Award sponsored by the American Farm Bureau Federation bringing great honor to the Town of Monroe and the State of North Carolina; and

Whereas, for several years, Frank Howey, Jr., has been active in the Young Farmer and Rancher program and recently was appointed as the Chair of the North Carolina Farm Bureau Young Farmer and Rancher Committee; and

Whereas, as Chair of the committee, Frank Howey, Jr., will serve a one-year term on the North Carolina Farm Bureau Board of Directors; and

Whereas, since 1990, Frank Howey, Jr., has served on the Board of Directors of the Union County Farm Bureau, was elected as treasurer in 1993, as vice-president in 1994, and as president in 1995, making his father proud; and

Whereas, Frank Howey, Sr., was a man devoted to his family, his profession, and his community; and

Whereas, Frank Howey, Sr., died on February 20, 1995, leaving his family to mourn his loss;

*Now, therefore, be it resolved by the Senate, the House of Representatives concurring:*

**Section 1.** The General Assembly honors the memory of Franklin "Frank" W. Howey, Sr., and expresses the gratitude and appreciation of this State and its citizens for his life.

**Sec. 2.** The General Assembly expresses its sympathy to the family and friends of Franklin "Frank" W. Howey, Sr., for the loss of a beloved family member and friend.

**Sec. 3.** The Secretary of State shall transmit a certified copy of this resolution to the family of Franklin "Frank" W. Howey, Sr.

**Sec. 4.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1995.

H.J.R. 535

# RESOLUTION 13

## A JOINT RESOLUTION HONORING THE VETERANS OF NORTH CAROLINA WHO SERVED DURING WORLD WAR II.

Whereas, it is important to educate the public about the role the military played and the contributions civilians made during World War II; and

Whereas, more than 395,900 North Carolinians served in the armed services during World War II; and

Whereas, more than 8,900 North Carolinians were killed during World War II; and

Whereas, these courageous individuals protected the national security interest of the United States and upheld the principles upon which this Great Nation was founded; and

Whereas, it is important to all North Carolinians that World War II veterans and their families are remembered for the hardships and sacrifices made during World War II; and

Whereas, on the 50th Anniversary of World War II, the State of North Carolina pauses to commend these veterans and their families;

*Now, therefore, be it resolved by the House of Representatives, the Senate concurring:*

**Section 1.** The General Assembly wishes to express its appreciation for the veterans who served during World War II and for their families for their sacrifices and remarkable contributions to the people of the United States and the world, and in particular to the people of North Carolina.

**Sec. 2.** The General Assembly wishes to honor the life and memory of those who died while serving in World War II.

**Sec. 3.** The General Assembly wishes to urge all municipalities, counties, civic groups, schools, and other organizations to show their gratitude to the veterans of World War II by actively participating in commemorative community events.

**Sec. 4.** The Secretary of State shall transit a certified copy of this resolution to the United States Department of Defense 50th Anniversary of World War II Commemoration Committee.

**Sec. 5.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1995.

S.J.R. 1102

# RESOLUTION 14

## A JOINT RESOLUTION HONORING THE MEMORY OF AMY JEAN JACKSON AND COMMENDING THE HEROISM OF ROBERT G. JACKSON, JR.

Whereas, on July 7, 1995, Amy Jean Jackson, age 11, and Robert "Bobby" G. Jackson, Jr., age 13, the children of Robert G. Jackson, Sr.

and Shana Myatt Jackson, became the victims of violent crimes committed against them on a farm in rural Caswell County; and

Whereas, Amy Jean Jackson lost her life and her brother, who exhibited great courage and valor in the aid of his sister, sustained grave injuries; and

Whereas, this tragic event is but one example of the many violent crimes committed against the citizens of North Carolina; and

Whereas, Amy Jean Jackson will be remembered as an outgoing, bright, friendly, athletic girl, who was very supportive of her brother; and

Whereas, Bobby Jackson deserves special recognition for his heroism during such a terrible incident;

*Now, therefore, be it resolved by the Senate, the House of Representatives concurring:*

**Section 1.** The General Assembly mourns the loss of Amy Jean Jackson and extends its sympathy to her family and friends and further commends the heroism of Bobby Jackson.

**Sec. 2.** The Secretary of State shall transmit a certified copy of this resolution to the family of Amy Jean Jackson.

**Sec. 3.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

H.J.R. 1069

## RESOLUTION 15

**A JOINT RESOLUTION SETTING THE TIME FOR ADJOURNMENT OF THE 1995 GENERAL ASSEMBLY TO MEET IN 1996, LIMITING THE SUBJECTS THAT MAY BE CONSIDERED IN THAT SESSION, AND PROVIDING FOR ADJOURNMENT SINE DIE OF THE GENERAL ASSEMBLY.**

*Be it resolved by the House of Representatives, the Senate concurring:*

**Section 1.** At 10:00 a.m. on Saturday, July 29, 1995, the House of Representatives and the Senate shall adjourn to reconvene at noon on Monday, May 13, 1996. During that session only the following matters may be considered:

- (1) Bills directly and primarily affecting the State budget for fiscal year 1996-97, provided that no such bill may be introduced in the House of Representatives or filed for introduction in the Senate after 4:00 p.m. Thursday, May 30, 1996, and any such measure must have been submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 p.m. Thursday, May 23, 1996.
- (2) Bills and resolutions introduced in 1995 and having passed third reading in 1995 in the house in which introduced, received in the other house in accordance with Senate Rule 41 or House Rule 31.1(d) as appropriate, and not disposed of in the other house by tabling, unfavorable committee report, indefinite postponement, or failure to pass any reading, and which do not violate the rules of either body.

- (3) Bills and resolutions implementing the recommendations of:
- a. Study commissions authorized or directed to report to the 1996 Session;
  - b. The House Ethics Committee; or
  - c. The Joint Legislative Ethics Committee or its Advisory Subcommittee.

Any bills authorized by this subdivision must be filed for introduction in the Senate or introduced in the House of Representatives no later than 4:00 p.m. Thursday, May 23, 1996, and any such measure must have been submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 p.m. Thursday, May 16, 1996.

- (4) Any local bill introduced in the House of Representatives or filed for introduction in the Senate by 4:00 p.m. Wednesday, May 29, 1996, and any such measure must have been submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 p.m. Wednesday, May 22, 1996, and accompanied by a certificate signed by the principal sponsor stating that no public hearing will be required or asked for by a member on the bill, the bill is noncontroversial, and the bill is approved for introduction by each member of the House of Representatives and Senate whose district includes the area to which the bill applies.
- (5) Selection, appointment, or confirmation of members of State boards and commissions as required by law, including the filling of vacancies of positions for which the appointees were elected by the General Assembly upon recommendation of the Speaker of the House of Representatives, President of the Senate, or President Pro Tempore of the Senate.
- (6) Any matter authorized by joint resolution passed during the 1996 Session by two-thirds majority of the members of the House of Representatives present and voting and by two-thirds majority of the members of the Senate present and voting. A bill or resolution filed in either house under the provisions of this subdivision shall have a copy of the ratified enabling resolution attached to the jacket before filing for introduction in the Senate or introduction in the House of Representatives.
- (7) Any bills primarily affecting any State or local pension or retirement system, introduced in the House of Representatives or filed for introduction in the Senate by 4:00 p.m. Wednesday, May 29, 1996, and any such measure must have been submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 p.m. Wednesday, May 22, 1996.
- (8) Joint resolutions, House resolutions, and Senate resolutions pertaining to Section 5(10) of Article III of the Constitution of North Carolina.
- (9) A joint resolution adjourning the 1995 Regular Session, sine die on a date earlier than provided by Section 3 of this resolution.

Sec. 2. The Speaker of the House of Representatives or the President Pro Tempore of the Senate may authorize appropriate committees or



subcommittees of their respective houses to meet during the interim between sessions to:

- (1) Review matters related to the State budget for the 1995-97 biennium,
- (2) Prepare reports, including revised budgets, or
- (3) Consider any other matters as the Speaker of the House of Representatives or the President Pro Tempore of the Senate deems appropriate,

except that no committee or subcommittee of a house may consider, after the date of adjournment provided in Section 1 of this resolution and before the date of reconvening provided in Section 1 of this resolution, any bill, or proposed committee substitute for such bill, which originated in the other house. A conference committee may meet in the interim upon approval by the Speaker of the House of Representatives or the President Pro Tempore of the Senate.

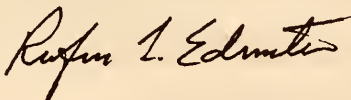
**Sec. 3.** The Senate and House of Representatives constituting the General Assembly of 1995 do adjourn sine die, on Friday, June 21, 1996, at 5:00 p.m.

**Sec. 4.** This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of July, 1995.

STATE OF NORTH CAROLINA  
DEPARTMENT OF STATE,  
RALEIGH, JULY 29, 1995

I, RUFUS L. EDMISTEN, Secretary of State of North Carolina hereby certify that the foregoing volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions on file in the office of the Secretary of State.

A handwritten signature in black ink, reading "Rufus L. Edmisten". The signature is written in a cursive style with a large, stylized "R" and "E".

*Secretary of State*

## APPENDIX

### EXECUTIVE ORDERS OF GOVERNOR JAMES B. HUNT, JR.

Title	Number
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# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

Executive Order 54

To Create the North Carolina Health Care Information  
and Communications Alliance

WHEREAS, the provision of high quality health care to all residents is a desirable state objective;

WHEREAS, optimizing the use of health care resources is necessary for all residents to receive high quality health care at reasonable cost;

WHEREAS, state government has need of detailed, current information on the quantity, quality, content, and cost of health care services rendered in the State of North Carolina for purposes of policy development and implementation of health care reform;

WHEREAS, the technology to allow interactive and real time exchange of medical information is necessary to optimize the use of health care resources on a continuous basis;

WHEREAS, the public sector must work with the private sector to develop information, telecommunications and telemedicine technologies applicable to health care in all settings;

WHEREAS, the development of a statewide health care information and telecommunications network is the most logical next step in meeting these goals; and

WHEREAS, upon direction by me the Articles of Incorporation of the North Carolina Health Care Information and Communications Alliance, Inc., a North Carolina non-profit corporation, have been filed with the Secretary of State of North Carolina and the formalities of organization of said corporation have been effected;

NOW THEREFORE, by the power vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED.

## Section I. Establishment

The North Carolina Health Care Information and Communications Alliance, Inc. (the "Alliance") is hereby established.

## Section 2. Powers and Duties of the Alliance.

The Alliance shall be operated in the public interest exclusively for charitable, scientific and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code (or the corresponding provision of any future federal tax law), including, without limiting the generality of the foregoing, to foster the development and implementation of a statewide health care information system for the purpose of improving the delivery, quality, accessibility and efficiency of health care services in North Carolina by utilization of advanced information, telecommunications, and telemedicine technologies.

Solely for the above purposes, but not by way of limitation, the Alliance is empowered:

A. To research, test, develop and promote the optimum application of information, telecommunications, and telemedicine technologies to health care services in all settings;

B. To effect the on-going development and implementation of open architecture, interoperable, integrated and interactive information systems in health care in all settings with fully articulated linkages to a statewide health care information network and with attention to national and international health care information systems and standards;

C. To effect the on-going design, development and implementation of distributed database management capability on a scale necessary to support a wide range of applications on the health care information network including, among others, clinical, emergency response, administrative, research and educational applications;

D. To foster development and installation of on-line standardized, computerized medical record and information systems in regional medical centers to enable utilization by remote providers of centralized diagnostic, treatment planning, expert consultation services, and medical reference, resource and training materials, with interactive question, answer and messaging capabilities;

E. To improve health care information systems utilized by participants in community-level health care delivery networks comprised, among others, of hospitals, clinics, physician and dental offices, group practices, emergency medical systems, nursing homes, home care services, pharmacies, company and school medical and wellness programs, social service agencies, medical, nursing and health administration schools, and telemedicine providers;

F. To assist small and remote rural hospitals, clinics, provider groups and other health-related organizations in becoming an integral part of the statewide health care information system;

G. To provide education and training in, and coordination with respect to, the use of information, telecommunications, and telemedicine technologies by health care providers, suppliers, patients, educators and public agencies;

H. To provide to the State of North Carolina and the United States federal government and other governmental units data and analysis for the purpose of health care policy development and decision-making;

I. To provide a mechanism for on-going evaluation of hardware and software performance, clinical effectiveness and administrative efficiency of the statewide health care information system and to provide a mechanism for feedback, redesign and upgrade of system capabilities;

J. To support the adoption and implementation of standards for computerized patient records and computerized patient histories;

K. To support clinical and health services research by providing confidentiality-protected patient histories and other information databases for use by qualified personnel;

L. To encourage the development of emerging businesses in the medical information, computer science, telecommunications, and telemedicine fields in North Carolina through research and education, and

M. To exercise all rights and powers conferred by the laws of North Carolina upon nonprofit corporations.

Section 3. Board of Directors. Consistent with the Articles of Incorporation of the Alliance, the members of the Board of Directors shall represent each of the following classes of members: (i) major medical centers; (ii) rural health care centers or organizations; (iii) telecommunications and information technology companies; (iv) pharmaceutical, clinical trial companies and health care applications device development and manufacturing companies; (v) other health care providers, local public health departments and nonprofit organizations; and (vi) persons who represent the interests of the State of North Carolina. The initial directors of the Alliance shall serve until their successors are duly elected and qualified as set forth in the Articles of Incorporation and By-Laws of the Alliance.

Section 4. Chair of the Board. The Governor shall appoint the Chair of the Board of Directors of the Alliance to serve until the third annual meeting of members of the Alliance

Section 4. Responsibilities of the Board of Directors in the First Year of Alliance Operations  
The Board of Directors shall complete the following tasks in the first year of operations:

A. Review and, if necessary, refine the By-laws of the Alliance

B. Take such steps as are necessary to apply for and receive certification as an Internal Revenue Code Section 501(c)(3) non-profit corporation;

C. Identify initiatives to be undertaken immediately to effect the purposes of the Alliance and make arrangements to implement these initiatives;

D. Develop and adopt a six-year work plan for the Alliance, to be updated as necessary but no less than every two years;

E. Develop and adopt a proposal for staffing the Alliance;

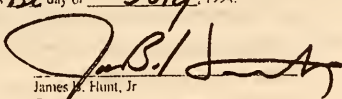
F. Develop and adopt an operating budget for the Alliance;

G. Open Alliance membership to a range of health provider organizations and health care information technology corporations, each of which, by virtue of its research, experience, services and/or products, will bring to the Alliance assets and commitments necessary to achieve the goals of the Alliance as delineated in this Order and the Alliance's corporate charter; and

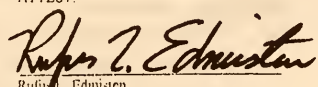
H. Establish the terms for Alliance membership, a fee schedule for membership participation in the Alliance, and other funding sources such that the Alliance will be self-sustaining and not dependent on government financing.

This Order shall be effective immediately and shall remain in effect until rescinded.

Done in the Capital City of Raleigh, this 1st day of July, 1994.

  
James B. Hunt, Jr.  
Governor

ATTEST.

  
Rufus L. Edmisten  
Secretary of State





# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER NUMBER 55  
NORTH CAROLINA -- HEAD START COLLABORATION PROJECT  
ADVISORY COUNCIL

WHEREAS, the State's impoverished children will be more effectively assisted if local, state, and national service resources and responsibilities are shared; and

WHEREAS, this pooling of resources and responsibilities can be better achieved if the various service providers for impoverished children have a forum for communicating ideas and coordinating collaborative projects;

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

## Section 1. Establishment.

The North Carolina -- Head Start Collaboration Project Advisory Council is hereby established.

## Section 2. Membership.

(a) The following individuals or their designees shall serve as members of the Council:

- (1) The Senior Education Advisor in the Office of the Governor;
- (2) The Secretary of Human Resources;
- (3) The Secretary of Environment, Health, and Natural Resources;
- (4) The Secretary of Commerce;

- (5) The Director of the Division of Family Development in the Department of Human Resources;
  - (6) The Director of the Division of Child Development in the Department of Human Resources;
  - (7) The Director of the Division of Medical Assistance in the Department of Human Resources;
  - (8) The Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services in the Department of Human Resources;
  - (9) The Director of the Division of Social Services in the Department of Human Resources;
  - (10) The Director of the Office of Rural Health and Development Services in the Department of Human Resources;
  - (11) The Director of the Division of Vocational Rehabilitation Services in the Department of Human Resources; and
  - (12) A Representative from the North Carolina Interagency Coordinating Council.
- (b) The following individuals or their designees shall be invited to serve as members of the Council:
- (1) The President of the System of Community Colleges;
  - (2) The Superintendent of Public Instruction;
  - (3) The President of the North Carolina Head Start Association;
  - (4) The President of the North Carolina Partnership for Children, Inc.; and

(5) The President of the North Carolina Community Action Association.

(c) In addition, nine other members shall be named by the Governor, of which at least three shall be former Head Start participants or parents. Five of these members shall serve an initial term of four years. Four of these members shall serve an initial term of two years. Thereafter, all terms shall be for four years.

Section 3. Chair.

The Governor shall designate the chair of the Council, who shall serve at his pleasure.

Section 4. Meetings.

The Council shall meet at least quarterly at the call of the chair.

Section 5. Purpose.

The purpose of this Council is to build cooperation between Head Start and other programs for impoverished children to ensure these children the fullest possible access to such programs within North Carolina. It creates a forum for state agencies, Head Start representatives, private businesses, and other appropriate organizations to develop an understanding among themselves of the importance of collaboration among the various existing service programs for impoverished children.

Section 6. Duties.

Together with the Head Start Coordinator within the Department of Human Resources, the Council shall:

- (a) Identify possible projects for collaboration between state and Head Start agencies;
- (b) Sponsor and advise such collaborative ventures; and

- (c) Serve as an information resource concerning the goals and objectives of such inter-agency collaborative projects. The office of the Head Start Coordinator shall serve as the central collection and dissemination point for this information.

Section 7. Administration.

Administrative support for the Council and its subcommittees shall be provided by the Special Assistant for Head Start in the Department of Human Resources ("DHR"). The U.S. Department of Health and Human Services has provided \$100,000 for the Council under grant number 90-CD-0997, "Head Start in North Carolina: Building a Better Partnership." This amount includes reimbursement for necessary subsistence and travel expenses.

Section 8. Effect on Other Executive Orders.

Executive Order Number 186 of the Martin Administration is hereby rescinded.

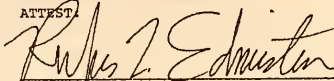
This Order shall be effective immediately.

Done in Raleigh, North Carolina this the 7~~H~~ day of

July, 1994.

  
James H. Hunt Jr.  
Governor

ATTEST

  
Rufus L. Edmisten  
Secretary of State





# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER NUMBER 56  
GOVERNOR'S TASK FORCE ON  
HEALTH OBJECTIVES FOR THE YEAR 2000

By the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment and Rescission Of Prior Orders.

The Governor's Task Force on Health Objectives for the Year 2000 ("Governor's Task Force") is hereby re-established. The Governor's Task Force established herein is the successor organization to the one established in Executive Orders 148 and 176 of the Martin Administration. Those Orders are hereby rescinded.

Section 2. Membership.

The Governor shall appoint 25 persons including a Chair, to serve four year terms. Thereafter, all vacancies shall be filled by the Governor.

The membership shall include representatives from the following:

- (a) Department of Human Resources;
- (b) Department of Environment, Health, and Natural Resources;
- (c) Association of North Carolina Boards of Health;
- (d) North Carolina Hospital Association;
- (e) North Carolina Medical Society;
- (f) North Carolina Academy of Family Physicians;

- (g) North Carolina Association of Local Health Directors;
- (h) The University of North Carolina School of Public Health;
- (i) North Carolina Citizens for Business and Industry;
- (j) North Carolina Commission on Indian Affairs;
- (k) North Carolina Association of County Commissioners;
- (l) NAACP;
- (m) North Carolina Minority Health Council;
- (n) Governor's Council on Physical Fitness and Health;
- (o) North Carolina Dental Society;
- (p) North Carolina Nurses' Association;
- (q) Old North State Medical Society; and
- (r) Eight at-large members, including a representative of local education.

### Section 3. Functions.

A. The Governor's Task Force shall meet regularly at the call of the Chair.

B. The Governor's Task Force shall provide encouragement and guidance to communities establishing their own local groups to accomplish the objectives developed by the Governor's Task Force.

C. The Governor's Task Force shall have the power to designate the Healthy Carolinians 2000 Task Forces, comprised of representatives of public and private organizations which support the goals of the Governor's Task Force. They shall seek to further the objectives of the Governor's Task Force and they shall exist so long as the Governor's Task Force does, unless earlier terminated.

### Section 4. Administration.

A. Administrative support for the Governor's Task Force shall be provided by the Department of Environment, Health, and Natural

Resources. Additional support shall be provided by the Department of Human Resources.

B. Members of the Governor's Task Force shall be reimbursed for necessary travel and subsistence expenses as authorized under General Statutes 138-5 and 138-6. Funds for the reimbursement of such expenses shall be made available from funds authorized by the Department of Environment, Health, and Natural Resources.

C. It shall be the responsibility of each Cabinet department to make every reasonable effort to cooperate with the Governor's Task Force in carrying out the provisions of this Order.

This Executive Order shall become effective immediately.

Done in Raleigh, North Carolina, this the 13<sup>th</sup> day of

July, 1994.



  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER NO. 57 GEORGIA EMERGENCY FLOOD RELIEF

WHEREAS, on July 7, 1994, the United States Department of Transportation declared a regional emergency justifying an exemption from 49 C.F.R. 390-399 (Federal Motor Carrier Safety Regulations) for a period of thirty days in response to the severe flooding in the Georgia area;

NOW, THEREFORE, pursuant to N.C.G.S. 166A-6(c), the North Carolina Emergency Management Act, by the authority vested in me as Governor by the laws and Constitution of the State of North Carolina, and with the concurrence of the Council of State, IT IS ORDERED:

### Section 1.

The State of North Carolina, under the supervision and direction of its Department of Transportation, shall waive weight restrictions on the gross weight of vehicles transporting food, supplies, and equipment to the victims of the severe flooding in the State of Georgia, subject to the following conditions:

- (a) Vehicle weight shall not exceed the maximum gross vehicle weight criteria established by the manufacturer or 90,000 pounds gross vehicle weight, whichever is less.

- (b) Tandem axle weights shall not exceed 50,000 pounds and single axle weights shall not exceed 25,000 pounds.
- (c) The vehicles shall, upon entering the State of North Carolina, stop at the first available vehicle weigh station and produce identification sufficient to establish that the load contained thereon is part of the relief effort for the severe flooding in the State of Georgia.
- (d) This Order shall not be in effect on bridges posted pursuant to N.C.G.S. 136-72.

#### Section 2.

The vehicles described above shall be exempt from the vehicle licensing and tax requirements of N.C.G.S. 105, Subchapter 5, Article 36B (motor fuels tax).

#### Section 3.

As a result of the 7 July 1994 declaration of regional emergency by the United States Department of Transportation and its corresponding exemption from 49 C.F.R. 390-399, nonparticipants in North Carolina's International Registration Plan shall be permitted to operate in North Carolina without penalty under N.C.G.S. 20-382.

#### Section 4.

If returning vehicles are loaded with some other backhaul, all normal weight and permit restrictions apply.

#### Section 5.

The North Carolina Department of Transportation shall enforce the conditions set forth in Sections 1, 2, and 3 in a manner which would best accomplish the purposes of this Order without endangering motorists on North Carolina highways.



This Order is effective immediately and shall remain in effect  
for thirty days.

Done in the Capital City of Raleigh, North Carolina, this the

14<sup>th</sup>

day of

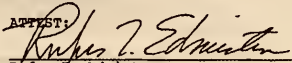
July

, 1994.



James B. Hunt Jr.  
Governor

ATTEST:



Rufus L. Edmisten  
Secretary of State



# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER NO. 58  
PUBLIC GREENWAYS ACROSS STATE LANDS

WHEREAS, greenways are linear open spaces that can provide many benefits to the State's environment and growing population; and

WHEREAS, North Carolina has earned a national reputation for greenways because approximately forty local governments have begun greenway programs under their own initiative; and

WHEREAS, the environmental and socioeconomic benefits of greenways are numerous, and have been set out in the North Carolina Greenways Advisory Panel Report to the Governor; and

WHEREAS, existing and potential greenways and their related benefits typically cross the jurisdictional boundaries of governments; and

WHEREAS, state support for locally initiated greenways is unfocused because responsibility for the various functions through which greenway benefits arise are distributed among separate departments; and

WHEREAS, there are opportunities to improve state government responsiveness to local governments in their efforts to develop greenway systems for the environmental, socioeconomic, and overall quality of life benefits of our citizens;

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

Section 1. Policy.

(a) It shall be the policy of the State to make every reasonable effort to anticipate and otherwise accommodate local government requests related to the development of greenway systems.

(b) In recognition of the broad and comprehensive character of greenway benefits and the narrow and specific focus of State government programs, it shall be the responsibility of every State agency to cooperate between and among themselves, to the maximum extent feasible, to address the multiple objectives of local greenway development.

(c) To the extent practicable, institutional solutions shall be implemented to enhance the development of greenway systems, rather than resolving issues on a case-by-case basis.

Section 2. Action.

The following actions shall be taken as initial steps toward realization of the "Public Greenways across State Lands" recommendation presented in the North Carolina Greenway Advisory Panel's Report to the Governor:

- (a) The State Property Office and the Department of Transportation shall work with local governments to integrate local greenways with State lands.
- (b) Every reasonable effort shall be made to integrate greenways with State lands in a manner that is compatible with the function and management of the property.

- (c) Severance of greenway corridors is to be avoided whenever possible, and the identification of comparable alternative routes is preferred to the exclusion of greenways altogether.
- (d) Appropriate easement conditions may be negotiated with the interested local governments to mitigate for the greenway corridor and assure adequate maintenance and management.

Section 3. Role of the Department of Environment, Health, and Natural Resources.

(a) The Department of Environment, Health, and Natural Resources shall continue the leadership role it began with establishment of the North Carolina Greenways Advisory Panel (NCGAP).

(b) The Department shall encourage, coordinate and monitor progress toward fulfillment of the recommendations presented in the NCGAP Report to the Governor, and the provisions of this Order.

(c) The Department shall emphasize the development of educational information on greenways for use within State programs, and through them to local governments and individual citizens.

This Executive Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 14th day of July, 1994.

  
James B. Hunt Jr.  
Governor

ATTEST

  
Rufus L. Edmisten  
Secretary of State



# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER NO. 59  
GOVERNOR'S TASK FORCE ON DRIVING WHILE IMPAIRED

WHEREAS, the operation of motor vehicles on our highways by persons while impaired constitutes a serious threat to the health and safety of our citizens; and

WHEREAS, a large portion of the fatal accidents on our highways are alcohol related; and

WHEREAS, the Governor's Five-Year Highway Safety Initiative is now in its second year and is preparing to make driving while impaired its area of emphasis; and

WHEREAS, the State of North Carolina must consider strong measures designed to deter and prevent the operation of motor vehicles by persons while impaired;

NOW, THEREFORE, by the authority vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

## Section 1. Establishment.

The Governor's Task Force on Driving While Impaired is established. The Task Force shall be an ad hoc committee of the Governor's Highway Safety Commission. The Task Force shall be composed of not more than thirty-five members appointed by the Governor to serve at the pleasure of the Governor. The Governor shall designate one of the members as Chair and one as Vice Chair.



The members of the Governor's Highway Safety Commission shall be ex officio, voting members of the Task Force. Additional members shall include, but not be limited to, representatives of law enforcement, the judicial system and the General Assembly.

Section 2. Meetings.

The Task Force shall meet regularly at the call of the Chair and may hold special meetings at any time at the call of the Chair, or the Governor. The Task Force is authorized to conduct public hearings.

Section 3. Expenses.

Members of the Task Force shall be reimbursed for such necessary travel and subsistence expenses as are authorized by N.C.G.S. 138-5. Funds for reimbursement of such expenses shall be made available from funds authorized by the Governor's Highway Safety Program.

Section 4. Duties.

The Task Force shall have the following duties:

- (a) Review the General Statutes of North Carolina applicable to driving while impaired;
- (b) Review proposals in other states designed to deter driving while impaired;
- (c) Consider proposals for North Carolina;
- (d) Recommend actions to reduce driving while impaired; and
- (e) Other such duties as assigned by the Chair or the Governor.

Section 5. Reports.

The Task Force shall present a report to the Governor no later than January 10, 1995. The Task Force shall be dissolved when its report is presented to the Governor.

This Order is effective immediately and shall expire  
January 31, 1995.

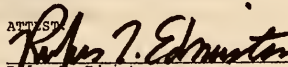
Done in the Capital City of Raleigh, North Carolina, this the

26th day of July, 1994.



James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus W. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER NUMBER 60 NORTH CAROLINA STATE DEFENSE MILITIA

WHEREAS, pursuant to Article 5, Chapter 127A of the General Statutes of North Carolina, provisions are made for the creation of the North Carolina State Defense Militia; and

WHEREAS, the militia may serve the citizens of North Carolina through volunteer efforts in time of natural disaster, catastrophe or in the protection of lives and property as directed by the Governor;

NOW, THEREFORE, by the authority vested in me by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

### Section 1. Establishment.

Pursuant to Article 5 of Chapter 127A of the General Statutes, I hereby establish and organize the North Carolina State Defense Militia. The purpose of this Militia is to assume duties so assigned by the Governor or his designee, consistent with the laws of the United States and North Carolina.

### Section 2. Meetings.

The North Carolina State Defense Militia is established within the Department of Crime Control and Public Safety. The Militia shall be responsible to and subject to the discretion and supervision of the Adjutant General of the North Carolina National

Guard. I hereby delegate to the Secretary of Crime Control and Public Safety the authority to prescribe rules and regulations concerning the North Carolina State Defense Militia in accordance with N.C.G.S. 127A-80(c).

Section 3. Commander.

The Commander of the State Defense Militia shall be appointed by the Secretary of the Department of Crime Control and Public Safety to the rank of General Officer of the North Carolina State Defense Militia and shall serve at the pleasure of the Secretary. All officers and soldiers shall be appointed in accordance with the rules and regulations established under Section 2 above and shall serve at the pleasure of the Secretary of Crime Control and Public Safety.

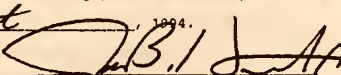
Section 4. Effect on other Executive Orders.

Executive Order No. 65 of the Martin Administration is hereby rescinded.

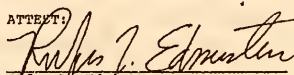
This Order is effective immediately, and shall remain in effect until rescinded by further Executive Order or other law. The provisions of N.C.G.S. 147-16.2 shall not apply to this Executive Order.

Done in the Capital City of Raleigh, North Carolina, this the

22nd day of August, 1994.

  
James B. Hunt, Jr.  
Governor

ATTEST:

  
Rufus L. Edmiston  
Secretary of State



# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER 61 AMENDING THE NORTH CAROLINA EMERGENCY RESPONSE COMMISSION

By the authority vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

Section 1 of Executive Order Number 17 is hereby amended to read:

### Section 1. Creation and Membership.

There is created the North Carolina Emergency Response Commission, hereinafter referred to as the "Commission." The Commission shall consist of not less than twelve members and shall be composed of at least the following persons:

Director, Division of Emergency Management, Department of Crime Control and Public Safety, who shall serve as Chairperson.

Coordinator, State Highway Patrol Hazardous Materials, Department of Crime Control and Public Safety;

Safety Director, Department of Agriculture;

Supervisor, Facilities Assessment Unit, Division of Environmental Management, Department of Environment, Health and Natural Resources;

Director, Solid Waste Management Division, Department of Environment, Health and Natural Resources;



Director, Radiation Protection Division, Department of  
Environment, Health and Natural Resources;

Director, Office of Waste Reduction (Pollution Prevention  
Program), Department of Environment, Health and Natural Resources;

Director, Emergency Planning, Division of Highways,  
Department of Transportation;

Chief, Transportation Inspection, Division of Motor Vehicles  
(Enforcement Section), Department of Transportation;

Manager, Training/Standards Program, Fire and Rescue Services  
Division, Department of Insurance;

Chief, Emergency Medical Services, Division of Facility  
Services, Department of Human Resources; and

Assistant Deputy Commissioner of Labor for Occupational  
Safety and Health, Department of Labor; and

Six at-large members from local government and private  
industry with technical expertise in the emergency response field  
may be appointed by the Governor and serve for terms of two (2)  
years at the pleasure of the Governor.

This Executive Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 26th day of

August, 1994.



James B. Hunt Jr.  
Governor

ATTEST

Rufus L. Edmisten  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER NO. 62  
ESCORTS FOR FOREIGN RESEARCH REACTOR SPENT NUCLEAR FUEL

WHEREAS, the United States Department of Energy intends to ship by rail Foreign Research Reactor Spent Nuclear Fuel from Sunny Point Army Terminal in North Carolina to the Savannah River federal facility in South Carolina;

WHEREAS, the United States Department of Energy has agreed that the State of North Carolina has a public safety interest in safeguarding these rail shipments; and

WHEREAS, the United States Department of Energy and the State of North Carolina have agreed to allow law enforcement and other State officials to review the status of the tracks ahead of the shipments, accompany the shipments, and provide escort for these shipments.

NOW, THEREFORE, by the authority vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

Section 1.

That for all Foreign Research Reactor Spent Nuclear Fuel shipped through the State of North Carolina, the North Carolina

State Highway Patrol Commander shall assign such personnel and equipment as he deems necessary to accompany the shipments, to review the status of the tracks ahead of the shipments, and to escort the shipments.

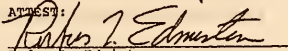
Section 2.

That such other State employees, including members of the Department of Crime Control and Public Safety, Division of Emergency Management, and Department of Environment, Health and Natural Resources, Division of Radiation Protection, shall be assigned as is deemed necessary by the respective Department heads.

This Order is effective immediately and shall expire 60 days from this date unless terminated or extended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this the 9<sup>th</sup> day of September, 1994.

  
James B. Hunt Jr.  
Governor

ATTEST:  
  
Rufus L. Edmisten  
Secretary of State



# State of North Carolina



JAMES B. HUNT, JR.  
GOVERNOR

EXECUTIVE ORDER NUMBER 63  
ESTABLISHING THE NORTH CAROLINA ALLIANCE  
FOR COMPETITIVE TECHNOLOGIES (NCACTS)

WHEREAS, the development and promotion of a technology-based economy is critical to the long-term welfare of the State and its citizenry;

WHEREAS, North Carolina ranks tenth in manufacturing shipments and has over 11,000 manufacturing firms that must continually modernize to stay competitive;

WHEREAS, North Carolina has leading national and international technology firms in areas such as pharmaceuticals, biotechnology, environmental technologies, telecommunications, electronics, materials, and computers;

WHEREAS, the State has invested substantial funds in public and quasi-public not-for-profit institutions charged with the development and deployment of technology to create commercial products and modernize manufacturing production; and

WHEREAS, the State has the potential to form a world class delivery and support system for technological innovation and manufacturing modernization;

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment.

The North Carolina Alliance for Competitive Technologies (the "Alliance") is hereby established.

Section 2. Purpose.

A. The Alliance has been established to apply innovation, technology and technical resources to promote economic growth in the State. It will serve as a central, strategic organization to guide existing resources and develop additional resources as necessary. It will insure the availability of a set of comprehensive, coordinated resources to meet industry needs for innovation and modernization.

The Alliance has three primary objectives:

1. To develop a comprehensive strategy and vision to guide the use of state public resources devoted to technology development and deployment.
2. To organize public and private entities involved in technology to insure a rational, customer-driven delivery system that measures and rewards results;
3. To match State investments with federal and other public and private investments for those initiatives critical to achievement of the State's technology strategy and its implementation.

B. The Alliance shall serve as a planning and coordinating organization for the State, charting future directions based on analysis of needs, demands and opportunities, and recommending future public investments in support of the State's overall technology strategy.



C. The Alliance shall work specifically with legislatively established entities, such as the Information Resources Management Commission (IRMC), to assist them in their activities and oversight functions related to specific technologies.

D. The Alliance shall coordinate state agencies and state-supported organizations involved in technology in accordance with a coherent long-range strategy and policies for application of technological resources to industry needs and economic development of the State.

E. The Alliance shall strive to maintain North Carolina's strategic technology leadership and further develop the infrastructure base to maintain its competitive position.

Section 3. Responsibilities.

The Alliance shall have the following functions and responsibilities:

A. To organize an office with a board of directors representative of the public and private sectors;

B. To conduct needs analyses of selective industries and systems capacity reviews in order to insure a delivery system accountable to its industry clients;

C. To develop common outcome-based evaluation standards and performance benchmarks for technology service providers;

D. To design a strategy for statewide and regional industrial centers of excellence, taking into account existing centers and their capabilities;

E. To propose additional incentive systems to encourage adherence to strategies by providers, higher education institutions,

and non-profit organizations involved in the technology development and deployment system;

F. To review, assess and propose additional initiatives that further assist the State's industry to maintain competitiveness in a world economy and maintain cutting-edge capabilities in technology;

G. To provide recommendations on the strategic and effective use of state technology investments for long-term economic development;

H. To review the State's existing infrastructure investments and analyze what additional investments are necessary in order to develop and maintain the competitiveness of North Carolina's industry; and

I. To undertake such other activities as are necessary to accomplish the above items.

#### Section 4. Specific Activities.

A. To undertake studies and surveys and to convene focus groups, task forces, and committees to better determine industry needs in technology development and deployment;

B. To undertake information gathering activities that focus on research, technology development and deployment for key industries.

C. To work with existing oversight entities, including IRMC, and to coordinate existing and new initiatives of state agencies that involve technology development and deployment, and encourage cross-agency and intergovernmental cooperation and forming of private/public partnerships;

D. To coordinate the State's response to new Federal government initiatives in research and technology development that

require state investments or building of private/public partnerships;

Section 5. Board of Directors.

A. The Alliance shall have a Board of Directors of 19 persons appointed by the Governor from among the public and private sectors with a majority of members being from the private sector. Nine directors shall be appointed from educational institutions, government (including executive and legislative branches), and non-profit institutions. Ten directors shall be appointed from private sector industry and technology fields, including but not limited to, pharmaceuticals and chemicals, environmental resources, food processing, furniture, information technologies, metals, paper, polymers, textiles, transportation and wood products. All initial directors, except the Chair, shall serve a one year term, and until their successors are appointed. Thereafter, terms shall be staggered. One third of the directors shall have one-year terms; one third, two-year terms; and one third, three-year terms. Directors appointed or reappointed thereafter shall serve three-year terms.

B. The Governor shall appoint the Chair of the Board of Directors to serve an initial three-year term.

C. Responsibilities of the Board of Directors shall be advisory in nature to the Governor and General Assembly. Their duties shall include:

1. Approval of policies, regulations, and by-laws that are necessary to form and operate the organization;

2. Oversight of the policies and plans of the Alliance, including the strategic plan, studies of needs, gaps in service delivery, and performance standards;

3. Implementation of procedures to insure cooperation with other parts of State government;

4. Adoption of a proposal for staffing the Alliance;

5. Approval of an operating plan for the Alliance; and

6. Identification of other activities and priorities that should be undertaken by the Alliance.

Section 6. Administration.

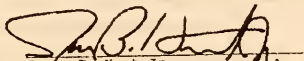
The Alliance shall be funded from federal and state matching funds. For administrative purposes, the Alliance shall be housed in the Department of Administration, with further oversight from the Office of the Governor.

This Executive Order shall become effective immediately.

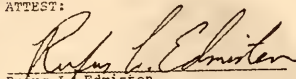
Done in Raleigh, North Carolina, this the 26<sup>th</sup> day of

September, 1994.



  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT, JR.  
GOVERNOR

EXECUTIVE ORDER 64  
AMENDING EXECUTIVE ORDER NUMBER 32 CONCERNING  
THE GOVERNOR'S ADVISORY COMMISSION  
ON MILITARY AFFAIRS

By the authority vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

Section 4 of Executive Order Number 32 is hereby amended to read:

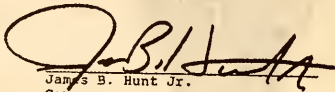
Section 4. Administration.

Support staff for the Commission shall be provided by the Office of the Governor. Members shall serve without compensation, but may receive reimbursement, contingent upon the availability of funds, for travel and subsistence in accordance with N.C.G.S. 138-5, 138-6, and 120-3.1

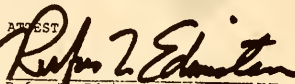
This Executive Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 20th day of October, 1994.



  
James B. Hunt Jr.  
Governor

ATTEST

  
Rufus W. Edmisten  
Secretary of State



# State of North Carolina



JAMES B. HUNT, JR.  
GOVERNOR

EXECUTIVE ORDER NUMBER 65  
AMENDING THE LOCAL GOVERNMENT PARTNERSHIP COUNCIL

By the authority vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

Section 1 of Executive Order Number 21 is hereby amended to read:

Section 1. Establishment and Members.

There is hereby established the North Carolina Local Government Partnership Council ("Council") consisting of 25 members. The Council shall be composed as follows:

(a) three members representing county governments selected by the Governor from a list of qualified persons submitted by the North Carolina Association of County Commissioners;

(b) three members representing municipal governments selected by the Governor from a list of qualified persons submitted by the North Carolina League of Municipalities;

(c) four at-large members appointed by the Governor;

(d) two members of the North Carolina Senate appointed by the President Pro Tempore of the Senate;

(e) two members of the North Carolina House of Representatives appointed by the Speaker of the House;

(f) the Secretary of the Department of Environment, Health and Natural Resources or his designee;

(g) the Secretary of the Department of Transportation or his designee;

(h) the Secretary of the Department of Human Resources or his designee;

(i) the Lieutenant Governor or his designee;

(j) the Secretary of the Department of Revenue or her designee;

(k) the State Treasurer or his designee;

(l) the State Auditor or his designee; and

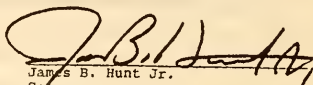
(m) the Secretary of State or his designee.

The Executive Director of the North Carolina Association of County Commissioners and the Executive Director of the North Carolina League of Municipalities are invited to serve, and the Governor's Director of Intergovernmental Relations shall serve, as ex-officio members of the Council.

This Order shall become effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 20th day of October, 1994.



  
James B. Hunt Jr.  
Governor

ATTEST

  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER NO.66 STATEWIDE FLEXIBLE BENEFITS PROGRAM

WHEREAS, State employees are an important resource to state government; and

WHEREAS, the State needs to provide a uniform competitive compensation package that includes an up-to-date benefits program in order to maintain its competitive edge with businesses and other sta in its region; and

WHEREAS, the State needs to provide the same tax-advantaged benefits to all State employees, regardless of the agency, department or university where they work; and

WHEREAS, the reasonable cost of administering an efficiently designed flexible benefits program could be recovered by the savings associated with such a program;

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

### Section 1. Policy.

A statewide employees flexible benefits coordination effort is hereby formalized for the purpose of administering these benefits to employees and to promote the development and maintenance of a competitive compensation package for all State employees.

## Section 2. Administration.

The State Personnel Director shall be responsible for central flexible benefits coordination for all State employees. There is created within the Office of State Personnel an Employee Flexible Benefits Program (EFBP). The administration of the statewide flexible benefits plan shall become the responsibility of EFBP. This program shall begin the process of assessing the flexible benefits plan design administrative procedures, administrative capabilities, and communications needs for the implementation of a comprehensive statewide flexible benefit plan. These responsibilities include, but are not limited to the following:

- (a) Implementing the Statewide Flexible Benefits Plan;
- (b) Administering contracts for supplemental insurance carriers and third party administrator for spending accounts and premium conversion plans if necessary;
- (c) Coordinating administration of spending accounts;
- (d) Coordinating enrollment and communication efforts concerning the Statewide Flexible Benefits Plan and other benefit programs;
- (e) Coordinating the Statewide Flexible Benefits Advisory Committee; and
- (f) Speaking on behalf of State government flexible benefits in the Legislature.

## Section 3. Statewide Flexible Benefits Advisory Committee.

There is hereby established a Statewide Flexible Benefits Advisor Committee (FBAC) for the purpose of assisting the State in developing and maintaining an effective flexible benefits plan for State

employees. The FBAC shall make recommendations to the State Personnel Director concerning the administration of the Flexible Benefits Plan and the components of the flexible benefits package for State employees.

Section 4. Duties of the FBAC.

The FBAC shall be responsible for the following:

- (a) Assist the Employee Flexible Benefits Section in developing administrative functions;
- (b) Review existing flexible benefit programs in State government
- (c) Recommend pre-tax benefits to be included in the EFBP;
- (d) Assist in reviewing contracts and administering spending accounts; and
- (e) Undertake other functions as necessary.

Section 5. Membership.

The membership of the FBAC shall consist of nine members appointed by the Governor as follows:

- (a) A Representative from the State Controller's Office;
- (b) A Representative from the State Treasurer's Office;
- (c) A Representative from the State Budget Office;
- (d) A Representative from the Attorney General's Office;
- (e) A Representative from the State Health Benefits Office;
- (f) A Representative from the Administrative Office of the Courts;
- (g) A Representative from the General Assembly;
- (h) A Representative from the University of North Carolina System;
- (i) A Representative from the State Employees Association.

One representative each from the Department of Public Instruction and the Department of Community Colleges will serve as non-voting ex officio members of the FBAC.



The Director of the Office of State Personnel shall appoint a chair from among the membership for a one year term. The EFBP Manager shall serve as an ex-officio member and provide support staff as required.

This order shall become effective immediately.

Done in the City of Raleigh this the 5th day of

December, 1994.



James B. Hunt Jr.  
Governor

ATTEST:

Rufus L. Edmisten  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER NO. 67  
EXTENSION OF EXECUTIVE ORDER NO. 1  
NORTH CAROLINA BOARD OF ETHICS

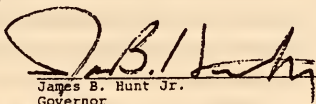
Pursuant to the authority vested in me as Governor by the  
Constitution and laws of North Carolina, IT IS ORDERED:

Executive Order No. 1, North Carolina Board of Ethics, as amended  
by Executive Order No. 14, is hereby extended without amendment for t  
years.

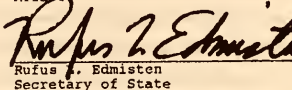
This Executive Order is effective immediately.

Done in the City of Raleigh this the 6th day of

January, 1995.

  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State



# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER NO. 68  
ESTABLISHING THE NORTH CAROLINA INFORMATION HIGHWAY  
COUNCIL OF ADVISORS AND THE NORTH CAROLINA  
INFORMATION HIGHWAY POLICY COMMITTEE

WHEREAS, the successful implementation of the North Carolina Information Highway is critical to improving the economic vitality of the State through the employment of information technology for economic development and to enhancing the quality of life of all citizens, particularly in the delivery of health services, the education of its citizens, the training of its workforce, the providing of greater public safety through the development of an integrated criminal justice information system, the offering of more integrated, effective and efficient services to citizens by state and local governments and the deployment of information technology to citizens utilizing our libraries as gateways; and

WHEREAS, it is important that the North Carolina Information Highway be developed from a broad perspective utilizing the knowledge of a diverse group of citizens at the advisory level and a group of internal and external public officials as a policy committee.

NOW, THEREFORE, by the authority vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment.

The North Carolina Information Highway Council of Advisors and the North Carolina Information Highway Policy Committee are hereby established.

Section 2. Definitions.

For the purposes of this Executive Order, the following definitions apply:

A. The term "Council" means the North Carolina Information Highway Council of Advisors;

B. The term "Policy Committee" means the North Carolina Information Highway Policy Committee;

C. "North Carolina Information Highway" (NCIH) means the advanced telecommunications networks operating with high-speed increased capacity capabilities and any other voice, data, video, imaging or other network application that might be interoperable or interconnected with the North Carolina Information Highway.

Section 3. Purpose and Intent.

The purpose of the Council and the Policy Committee is to advise the Governor, the Information Resources Management Commission (IRMC), the North Carolina General Assembly and the Office of the State Controller on any matters pertaining to the NCIH. The Policy Committee shall also make such recommendations as it deems necessary to the Information Highway Grants Advisory Council.

Section 4. Membership.

A. The Council shall consist of 30 members. The Speaker of the House shall appoint 5 members and the President Pro Tem of the Senate shall appoint 5 members. The Governor shall request the Chair of the IRMC, the Chair of the North Carolina Utilities Commission, the Chair

of the Policy Committee, the Chief Executive Officer of the Microelectronics Center of North Carolina (MCNC) and the State Controller to serve as ex-officio members of the Council. The Governor shall appoint the remaining 15 members of the Council, including the Chair. The appointing authorities shall consider interest in the State's telecommunications policies related to the ability of the State to provide responsive and cost-effective services to its citizens. To the extent possible, efforts should be made to represent all geographical areas of the State.

Of the Governor's appointees, six shall be professionals from private industry and shall be from the ranks of leaders in either the fields of information or telecommunications technology or senior business leaders with experience in applying these technologies and services on an enterprise-wide basis. These members shall also be available to serve as an additional advisory body for offering expert guidance and counsel regarding the implementation, application and management of resources and services for information technology and telecommunications to the Governor, the State Controller and the IRMC, as was previously performed by the Governor's Committee on Data Processing. To augment this group for accomplishing its expanded responsibilities, the State Controller may appoint up to four individuals from non-profit organizations, local or federal government agencies, universities or research institutions to serve with it when meeting as an additional advisory body. A member of the Council of Advisors shall be authorized to sit on the IRMC. This person should fill the seat formerly assigned to the Governor's Committee on Data Processing.



The NCIH Council of Advisors shall meet at least twice yearly. They will work with the Policy Committee to involve the business, educational, and governmental communities and the citizens at large to understand the Information Highway, applications that can use these information networks and their benefits to the State of North Carolina.

B. Members of the Policy Committee and its Chair shall be appointed by the Governor. The Policy Committee shall be composed of individuals who represent agencies of the State of North Carolina including, but not limited to, representatives from the Council of State and Cabinet agencies, the University of North Carolina System, and the North Carolina Community College System. A staff member from the IRMC, a staff member from the State Controller's Office and two staff members of the MCNC Advanced Networking Group shall be appointed by the Governor. Representatives of public or private non-profits should be considered for membership. Membership on this Policy Committee should reflect the membership of the former NCIH Planning Committee. The Committee may form subcommittees as desired to help in the performance of its duties and responsibilities.

The Policy Committee shall provide guidance and direction to the NCIH Council of Advisors. It shall use its experience and knowledge to provide unified recommendations on NCIH future directions to the IRMC, to recommend proposed NCIH standards to the IRMC, to integrate applications among agencies, to promote interoperability, and to coordinate integration efforts across state and local government agencies.

The Policy Committee, the Office of the State Controller and the IRMC should work closely together, particularly during the critical

controlled introduction phase (five years) of the NCIH, when they should be in constant communication. To facilitate this, it is requested that the State Controller encourage his NCIH staff to attend all meetings of the Policy Committee. The Office of the State Controller and the Information Resources Management Commission will continue to have the authority over telecommunications currently identified for each by the General Statutes of North Carolina.

C. Members of the Council and the Policy Committee shall serve two-year terms. Vacancies shall be filled by the original appointing authority for the balance of the unexpired terms.

D. A majority of the members of the Council shall constitute a quorum for the transaction of business of the Council. A majority of the members of the Policy Committee shall constitute a quorum for the transaction of business of the Policy Committee.

E. The Council members shall receive no salary. Subsistence and travel expenses are available for those who could not serve without reimbursement, in accordance with the N.C.G.S. 120-3.1, 138-5 and 138-6, as applicable. Members of the General Assembly will be requested to use their General Assembly funds to reimburse them for their expenses. Policy Committee members will receive any reimbursement from their respective agencies.

F. The staff for the Council shall be the Policy Committee, staff for the Policy Committee shall be provided by the Office of the Governor, the IRMC and the Office of the State Controller. State entities who have members on the Policy Committee may be requested to provide some staff assistance to the Policy Committee.

#### Section 5. Responsibilities.

The NCIH Council and the Policy Committee shall file a report wit

the Governor, the IRMC and the General Assembly by June 1995 and thereafter at least twice per year. The report may make recommendations on the NCIIH implementation in the public high schools and elementary schools of North Carolina, the libraries, the criminal justice system, intergovernmental and economic development activities health services delivery and any other recommendations they might choose to make about the planning and implementation of the NCIIH. Upon request, the Council shall also report to the Education Oversight Committee and any other General Assembly Oversight Committee.

Section 6. Funding.

Monies for the carrying out of this Executive Order shall come from the funds of the State already appropriated. The Council and the Policy Committee may also receive funds from other public and/or private for-profit and nonprofit foundations.

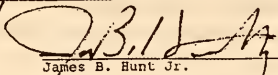
Section 7. Effect on Other Executive Orders.

All prior Executive Orders or portions of prior Executive Orders inconsistent herewith are rescinded.


This order shall become effective immediately and remain in effect until rescinded.

Done in the Capital City of Raleigh, North Carolina, this the

6th day of January, 1995.

  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER NO. 69 GOVERNOR'S COUNCIL ON CHILDREN, YOUTH, AND FAMILIES

WHEREAS, the State of North Carolina should promote and encourage collaboration and collaborative planning and delivery of services among State agencies that serve the needs of children and families;

WHEREAS, the State of North Carolina should make more effective use of existing federal and state resources and programs;

WHEREAS, the State of North Carolina should streamline government, including the delivery of services and eliminate duplication; and

WHEREAS, the State of North Carolina should promote and enhance state-level leadership in achieving these goals;

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

### Section 1. Establishment.

The Governor's Council on Children, Youth, and Families is hereby established.

### Section 2. Duties.

(a) The Governor's Council on Children, Youth, and Families shall:

- (i) Provide state-level leadership on issues affecting

children, youth, and families, including children with special needs;

- (ii) Foster collaboration and coordination between and among the many state agencies with responsibility for providing services to children, youth, and families;
- (iii) Help develop and carry out a unified and comprehensive long-range children's and families' agenda; and
- (iv) Promote accountability for achieving the State's goals in a timely and effective manner.

(b) The Council shall meet biannually and report to the Governor on its progress in meeting the intent and purpose set forth in this Executive Order. The Governor may convene the Council at other times during the year as necessary to achieve these goals.

(c) The Governor shall chair the Council. The Governor shall appoint a Vice-Chair of the Council, who shall chair the Council in his absence.

(d) The Governor shall set the agenda for the Council's meetings and shall take into consideration its reports in setting policy for children, youth, and families.

(e) The Council may establish such committees, task forces, or other working groups as are necessary to assist in performing its duties. The Council may invite non-members to serve on such groups.

(f) Existing executive commissions, councils, and advisory committees with responsibility for issues affecting children, youth, and families shall advise and assist the Council in performing its duties and responsibilities.



Section 3. Membership.

(a) The Council shall consist of the following members or their designees:

- (i) The Governor's Senior Education Advisor;
- (ii) The Secretary of Environment, Health and Natural Resources;
- (iii) The Secretary of Human Resources;
- (iv) The Secretary of Cultural Resources;
- (v) The Secretary of Commerce;
- (vi) The Secretary of Transportation; and
- (vii) The Secretary of Administration.

(b) The following individuals shall be invited to serve as members of the Council and may appoint a designee:

- (i) The Lieutenant Governor;
- (ii) The Superintendent of Public Instruction;
- (iii) The Chair of the State Board of Education;
- (iv) The Commissioner of Labor;
- (v) The President of the North Carolina Community College System;
- (vi) The President of the University of North Carolina;
- (vii) The Director of the Administrative Office of the Courts;
- (viii) The Chair of the North Carolina Partnership for Children, Inc.;
- (ix) The Chairs of the House of Representatives and Senate appropriations subcommittees for human resources (one from each body); and

- (x) The Chairs of the House of Representatives and Senate substantive committees with responsibility for human services programs affecting children, youth and families (one from each body).

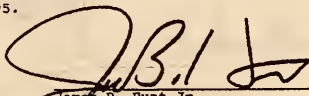
Section 4. Staff Assistance.

The Department of Human Resources shall provide clerical support and other services required by the Council.

This order shall be effective immediately.

Done in the City of Raleigh this the 24th day of

January, 1995.

  
James B. Hunt Jr.  
Governor



ATTEST:

  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER NO. 70  
REISSUING EXECUTIVE ORDER NO. 37,  
CITIZEN ACCESS TO PUBLIC RECORDS  
MAINTAINED BY STATE GOVERNMENT

WHEREAS, Executive Order No. 37, signed January 28, 1994, expired October 28, 1994; and

WHEREAS, Executive Order No. 37 implemented a trial period for the Departments of Administration and Transportation to develop an electronic register of public information; and

WHEREAS, the Information Resources Management Commission has reviewed the implementation of Executive Order No. 37 and has recommended that the trial period be extended.

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Executive Order No. 37, Citizen Access to Public Records Maintained by State Government, is hereby reissued, without changes, until July 1, 1995. The IRMC is requested to make further recommendations prior to the expiration of this Order.

This order shall be effective immediately.

Done in the City of Raleigh this the 25<sup>th</sup> day of

January, 1995.



James B. Hunt Jr.  
Governor

ATTEST:

Rufus L. Edmisten  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER NO. 71  
EXTENDING EXECUTIVE ORDERS 2, 6, 9, 10, 11, 15, 16, 17 AND 19

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

The following Executive Orders are hereby extended:

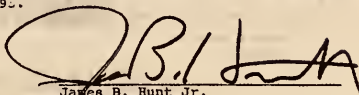
- A. Executive Order No. 2, Small Business Council;
- B. Executive Order No. 6, Entrepreneurial Development Board;
- C. Executive Order No. 9, Commission for a Competitive North Carolina;
- D. Executive Order No. 10, Quality Leadership Awards Council;
- E. Executive Order No. 11, Governor's Council of Fiscal Advisors;
- F. Executive Order No. 15, Coordinating Committee on the Americans with Disabilities Act;
- G. Executive Order No. 16, The Geographic Information Coordinating Council;
- H. Executive Order No. 17, North Carolina Emergency Response Commission; and
- I. Executive Order No. 19, Center for the Prevention of School Violence.



This order shall be effective immediately and shall expire two years from this day.

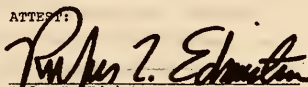
Done in the City of Raleigh this the 26th day of

January, 1992.



James B. Hunt Jr.  
Governor

ATTEST:



Rufus L. Edmisten  
Secretary of State



# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER NO. 72 NORTH CAROLINA STATE POSTSECONDARY ELIGIBILITY REVIEW COMMISSION

WHEREAS, The Higher Education Act of 1965, Title IV, United States Code, created Federal Financial Assistance programs and access to them for students enrolled in accredited higher and postsecondary educational institutions and that Act is reauthorized every five years; and

WHEREAS, The Higher Education Act Amendments of 1992 included a new provision, Part B - Program Integrity Triad, Subpart 1 - State Postsecondary Review Program, which requests and authorizes each state to designate a State Postsecondary Review Entity; and

WHEREAS, with due diligence and concern for the education providers in the State of North Carolina, the Governor has been advised that designating a representative Commission to act as the N.C. State Postsecondary Review Entity will best serve the intent of the legislation and the needs of the education community.

NOW, THEREFORE, by the authority vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

### Section 1. Establishment.

The North Carolina State Postsecondary Eligibility Review Commission is hereby established to carry out the State's responsibility under Title IV USC, Part B. All acts done by the Commission prior to the execution of this Order are hereby ratified.

### Section 2. Duties.

The Commission shall guide the activities of the State's Postsecondary Review Program, serve as the State's Postsecondary Review Entity, prepare the Eligibility Review Standards, and implement the Postsecondary Institutional Eligibility Review process on behalf of United States Secretary of Education.

### Section 3. Membership.

The Commission shall be composed of five members appointed by the Governor from the following categories:

- A. One representative of public higher education;
- B. One representative of private higher education;
- C. One representative of community colleges;
- D. One representative of proprietary schools; and
- E. One at-large representative.

The Executive Directors of the N.C. State Education Assistance Authority and the N.C. State Approving Agency shall serve as ex-officio members. The members shall serve two-year terms. The Chairperson shall be chosen by the membership to serve a term as agreed to by the membership and the selected chair. In the event a position becomes vacant, the Governor shall appoint another member to fill the unexpired term.

### Section 4. Expenses.

Commission members shall receive necessary per diem, travel and subsistence expenses, pursuant to N.C.G.S. 138-5, if available. Funds to support these expenses, to the extent permitted by federal law, shall be paid from federal sources.

Section 5. Administrative Support.

A. The Commission is authorized, to the extent federal funds are available, to hire such personnel as is necessary to fulfill its mission. Personnel shall be directly accountable to the Commission.

B. The North Carolina Department of Administration shall provide administrative fiscal management services to the Commission.

Section 6. Review.

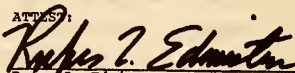
The Commission membership shall review its need to continue to exist April 1, 1996 and every two years thereafter. Following each review, the Commission shall recommend that the Governor either extend or rescind this Executive Order.

Done in the Capital City of Raleigh, North Carolina, this the 6th day of March, 1995.



  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER NO. 73 SUSPENSION OF RULES DURING LOCAL EMERGENCIES

WHEREAS, electric service is one of the most essential services required by modern society, and the public welfare is immediately threatened by any occurrences, natural or manmade, which interrupt the delivery of electricity and electrical services; and

WHEREAS, state and federal regulations prohibit electric supplier vehicles and commercial motor vehicle drivers from working extended hours to assist in the repair of damage and restoration of the delivery of electricity and electrical services; and

WHEREAS, federal law, specifically 49 C.F.R. Section 390.23, allows a Governor to suspend these rules and regulations if the Governor determines that an emergency condition exists.

NOW, THEREFORE, by the authority vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

### Section 1.

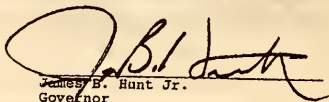
Electric supplier vehicles and commercial motor vehicle drivers are exempt from the rules and regulations restricting



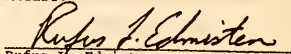
their participation in emergency relief efforts during a "local emergency." A "local emergency" shall be considered to be any power outage or interruption of electric service that occurs within the State of North Carolina, including a near term threat or occurrence of a meteorological condition or other condition reasonably likely to result in power outages or electric service interruption. A "local emergency" begins when the affected electric supplier receives notice of the power outage or interruption of electric service or receives notice of the existence of conditions reasonably likely to result in power outages or electric service interruption. The "local emergency" continues until the necessary maintenance or repair work is completed and personnel utilized to perform necessary maintenance or repair work have returned to their respective normal work routines.

This Executive Order is effective immediately.

Done in the City of Raleigh this the 15<sup>th</sup> day of March, 1995.

  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State



# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER NO. 74 DESIGNATING THE YEAR OF THE MOUNTAINS AND CREATING THE YEAR OF THE MOUNTAINS COMMISSION

WHEREAS, North Carolina's mountains are among the state's most valuable and unique assets; and

WHEREAS, North Carolina's mountains merit widespread appreciation and understanding; and

WHEREAS, growth and change have brought new sets of opportunities and challenges to people of the mountains; and

WHEREAS, regional efforts and partnerships with the State are needed to address challenges facing mountain communities today and in the future; and

WHEREAS, new initiatives for Western North Carolina can honor and share the culture and history of the mountains and enhance respect for the natural beauty and environment of the region while fostering quality growth and development; and

WHEREAS, the people of North Carolina's mountains are pursuing a new vision for the mountains that integrates the needs of young people, education, technology, industry, and recreation while protecting the region's resources and quality of life; and

WHEREAS, the people of North Carolina's mountains seek to enhance Regional Identity and Recognition, to cultivate Sustainable Communities, and to promote and support Mountain Stewardship.

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of North Carolina. IT IS ORDERED:

### Section 1. Year of the Mountains.

The Year of the Mountains is hereby designated July 1, 1995 through June 30, 1996.

Section 2. Establishment.

The Year of the Mountains Commission is hereby established.

Section 3. Membership and Terms.

The Governor shall appoint 15 persons to serve on the Commission and shall designate one of its members to serve as Chair. The Commission shall meet regularly to carry out its duties at the call of the Chair.

Section 4. Powers and Duties of the Commission.

- A. To develop a set of recommendations to effectuate the purposes of this Order through such activities as meetings, fact-finding tours, educational events, and reports.
- B. To focus statewide media and public attention on the mountains to enhance quality growth and development, protect the natural beauty, and preserve the culture of the region.
- C. To coordinate its efforts with local officials and to help promote mountain events.
- D. To perform and exercise such other duties and powers as may be necessary to accomplish the purposes of this Executive Order.

Section 5. Administration.

The Governor shall designate an Executive Coordinator to provide professional assistance and background information to the Commission, and coordinate its activities. The Executive Coordinator shall maintain the official minutes and other records of the Commission, and shall work in partnership with local and state governmental agencies, the community college and university system, and the private nonprofit sector to furnish additional staff assistance, educational and research materials, and any other administrative support which the Commission may require.

The Executive Coordinator shall report directly to the Commission and shall carry out its goals as set forth in the Commission's mission statement. Members of the Commission shall receive necessary travel and subsistence expenses pursuant to N.C.G.S. 138-5. Funding for the Executive Coordinator and the Commission shall be provided by DEHNR, the Department of Commerce, the Department of Cultural Resources, and monies appropriated by the General Assembly.

#### Section 2. Establishment.

The Year of the Mountains Commission is hereby established.

#### Section 3. Membership and Terms.

The Governor shall appoint 15 persons to serve on the Commission and shall designate one of its members to serve as Chair. The Commission shall meet regularly to carry out its duties at the call of the Chair.

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#### Section 5. Administration.

The Governor shall designate an Executive Coordinator to provide professional assistance and background information to the Commission, and coordinate its activities. The Executive Coordinator shall maintain the official minutes and other records of the Commission, and shall work in partnership with local and state governmental agencies, the community college and university system, and the private nonprofit sector to furnish additional staff assistance, educational and research materials, and any other administrative support which the Commission may require.

The Executive Coordinator shall report directly to the Commission and shall carry out its goals as set forth in the Commission's mission statement. Members of the Commission shall receive necessary travel and subsistence expenses pursuant to N.C.G.S. 138-5. Funding for the Executive Coordinator and the Commission shall be provided by DEHNR, the Department of Commerce, the Department of Cultural Resources, and monies appropriated by the General Assembly.

The Commission is authorized to accept donations of in-kind services and funds, subject to the Executive Budget Act. Western North Carolina Tomorrow (WNCT), a 501(c)(3) nonprofit, has agreed to administer the funds, including those previously appropriated to it by the General Assembly.

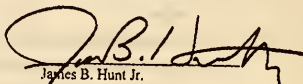
The Commission shall be considered a "public body" and its meetings shall be open to the public pursuant to General Statutes Chapter 143, Article 33C. The Commission, for administrative purposes only, shall be located in the Governor's Office.

This Executive Order shall be effective immediately and expire June 30, 1996.

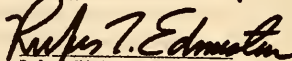
Done in the Capital City of Raleigh, North Carolina, this the 27th day of

March, 1995.



  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State



# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

EXECUTIVE ORDER NO. 75  
CREATION OF REGIONAL COUNCILS AND A COORDINATING  
COUNCIL TO SUPPORT SOUND ENVIRONMENTAL MANAGEMENT  
IN THE ALBEMARLE-PAMLICO ESTUARINE STUDY REGION

WHEREAS, the Albemarle-Pamlico Estuarine Study (APES) was a cooperative effort by the State of North Carolina and the U.S. Environmental Protection Agency to preserve water quality, habitats, and fisheries in eastern North Carolina; and

WHEREAS, APES was the first of 21 National Estuary Programs to be started under the Clean Water Act; and

WHEREAS, APES has provided extensive information and scientific research about the environmental issues facing the Albemarle-Pamlico estuary since 1987; and

WHEREAS, that scientific information was combined with extraordinary involvement by citizens to develop a Comprehensive Conservation and Management Plan (CCMP) entitled "A Guide to Environmental and Economic Stewardship in the Albemarle-Pamlico Region"; and

WHEREAS, the CCMP also recognizes that, from an ecological and an economic standpoint, the best way to ensure the general environmental health of the Albemarle-Pamlico watershed is to manage and protect the five river basins of the watershed; and

WHEREAS, the CCMP also recognizes the importance of involving the public in making decisions regarding environmental management; and

WHEREAS, the CCMP recommends the establishment of Regional Councils to foster public input from each of the five river basins in the Albemarle-Pamlico region, and a Coordinating Council to support the implementation process of the CCMP;

NOW, THEREFORE, by the authority vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment.

Five Regional Councils of citizens ("Councils"), one for each river basin in the Albemarle-Pamlico watershed, are hereby established to advise agencies responsible for environmental management on concerns and issues relative to that basin.

A Coordinating Council consisting of representatives from each Regional Council, citizen commissions, federal resource agencies, and state government is hereby established to evaluate and support implementation of the CCMP.

Section 2. Regional Councils.

A. Composition.

1. Basins to be represented by the Councils.

Five separate Regional Councils shall represent each of the following river basins, with the area of the river basin being defined by the hydrologic boundaries ascribed to it by the N.C. Division of Environmental Management (DEM):

- a. Neuse (including areas of the White Oak River basin that drain to Core and Bogue Sounds)

- b. Tar-Pamlico (including areas draining directly into the northern Pamlico Sound)
  - c. Roanoke (the portion of the basin below Lake Gaston dam)
  - d. Chowan
  - e. Pasquotank/Alligator (including smaller rivers and areas that drain directly into the Albemarle, Currituck, Croatan, and Roanoke Sounds)
2. Membership of the Regional Councils.
- a. Each county in the basin shall have at least three representatives on the Council for that basin. In instances where a county lies in more than one basin, that county shall have at least three representatives on each Council that serves a basin of which the county is a part.
  - b. Membership from each county shall include:
    - (1) one elected or appointed county official selected by the board of county commissioners;
    - (2) one elected or appointed municipal official selected by the board of county commissioners in consultation with municipalities in the county (counties without municipalities shall appoint a second county official); and
    - (3) one person appointed by the Secretary of the N.C. Department of Environment, Health and Natural Resources (DEHNR). In making his appointments to each Council, the Secretary shall, to the greatest extent possible, seek

to ensure demographic and social balance, as well as balance among the following interests:

- (a) agriculture
- (b) silviculture
- (c) conservation
- (d) environmental science
- (e) commercial fishing
- (f) business/industry
- (g) recreational fishing
- (h) tourism
- (i) Soil and Water Conservation Districts
- (j) at large

- c. Each Regional Council may expand its membership as it deems necessary.
- d. Members shall serve for a five-year term to coincide with the five-year cycle of discharge permit renewals in the river basins. Vacancies shall be filled by the appointing authority.

B. Duties.

- 1. The Regional Councils shall advise and consult with local, state, and federal governments, as well as the general public and different interest groups within the basin, on the implementation of environmental management programs in the river basins. Because different basins are likely to face different concerns and problems, the Council for a particular basin shall work

to prioritize the problems to be addressed in that basin and to design and build consensus support for the most cost-effective strategies for dealing with those problems. The councils shall also advise the public and local governments of actions and information relevant to environmental management in the basin. The Councils will have no authority other than as advisory bodies.

2. Federal and state agencies with environmental management responsibilities in the basin shall be invited to participate in meetings of the Regional Councils.
3. Each council shall be responsible for determining its own rules of order, chairmanship, attendance regulations, quorums, and other matters of protocol.
4. DEHNR shall assist the councils and serve as a conduit for information between the councils, state and federal agencies, local government, and the public.
5. Each council shall work with DEHNR in preparing an annual public report on the progress of environmental protection and related concerns in the five river basins.

C. Meetings.

Each Regional Council shall meet within three months of its formation by the Secretary of DEHNR and local governments. Each Council shall meet at least two times each year, or more frequently if deemed appropriate.

Section 3. Coordinating Council.

A. Membership.



Membership of the Coordinating Council shall include:

1. Fifteen representatives of the five Regional Councils.  
(Each Regional Council will select two of the elected and/or appointed government officials and one other representative from any background.)
2. Seven representatives of citizen commissions and councils. The Chair of each of the following groups shall select a representative:
  - a. Marine Fisheries Commission
  - b. Soil and Water Conservation Commission
  - c. Environmental Management Commission
  - d. Coastal Resources Commission
  - e. Wildlife Resources Commission
  - f. Forestry Advisory Council
  - g. Sedimentation Control Commission
3. Four representatives of federal resource agencies, to be selected by the appropriate federal administrators, are invited to participate:
  - a. U.S. Environmental Protection Agency
  - b. U.S. Army Corps of Engineers
  - c. U.S. Fish and Wildlife Service
  - d. National Oceanic and Atmospheric Administration
4. Three representatives of state government:
  - a. Secretary of DEHNR, or his designee (Chair of the Coordinating Council)
  - b. Secretary of the N.C. Department of Commerce, or his designee

- c. Commissioner of the N.C. Department of Agriculture, or his designee, is invited to participate.

B. Duties.

1. The role of the Coordinating Council shall be to evaluate and support the implementation process to ensure the highest level of cooperation and coordination among agencies, local governments, and public and private interest groups.
2. The Coordinating Council shall consult the Regional Councils for guidance on coordinating implementation strategies at a local level.
3. The Coordinating Council shall set annual priorities for implementing sections of the CCMP and make recommendations based on progress and success, and shall identify and prioritize information needs as described in the CCMP.
4. The Coordinating Council shall pursue a Memorandum of Agreement between North Carolina and Virginia to ensure continued cooperation and coordination in implementing the CCMP.
5. Each participating agency, institution, and organization of the Coordinating Council shall submit annual reports evaluating the progress made in implementing CCMP recommendations and the success of implementation strategies.

Section 4. Compensation, Per Diem and Expenses.

Members of the Regional Councils and the Coordinating Council

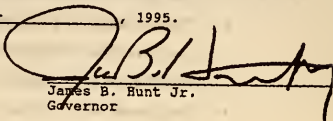
shall serve voluntarily and without compensation, per diems or expenses.

Section 5. Effect of Other Executive Orders.

All other Executive Orders or portions of Executive Orders inconsistent herewith are hereby rescinded.

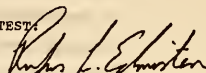
This order shall become effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 30th day of March, 1995.

  
James B. Hunt Jr.  
Governor



ATTEST:

  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER NO. 76 NORTH CAROLINA MOTOR CARRIER ADVISORY COMMITTEE

WHEREAS, the motor carrier industry is an important industry to North Carolina and to the United States; and

WHEREAS, coordination with other states' laws and federal laws benefit the motor carrier industry, businesses served by the motor carrier industry, and the citizens of North Carolina.

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

### Section 1. Establishment.

There is hereby established the North Carolina Motor Carrier Advisory Committee.

### Section 2. Membership.

The Advisory Committee shall be composed of not less than eighteen (18) members as follows:

- A. The Secretary of the Department of Transportation;
- B. The Highway Administrator;
- C. Commissioner, Division of Motor Vehicles;
- D. Director, Motor Fuel Division, Department of Revenue;
- E. Director, Governor's Highway Safety Program;
- F. North Carolina State Highway Patrol representative;
- G. North Carolina State Ports Authority representative;

H. At least six members from the motor carrier industry representing the following areas: heavy duty and rigging, truckload, less than truckload, trucking association, private carrier, and tank/bulk;

I. At least three (3) members representing the interests of intra-state truck users;

J. National Motor Carrier Advisory Committee members shall serve as ex-officio members of the North Carolina Advisory Committee.

All members not specifically named herein shall be appointed by and serve at the pleasure of the Secretary of the Department of Transportation (DOT). They shall serve two-year terms. The Secretary of DOT or his designee shall chair the Advisory Committee. The Secretary may designate a co-chair from among the public members of the Committee.

### Section 3. Duties.

The Advisory Committee shall have the following duties:

A. To review current laws, policies, and procedures regarding taxation, regulation, and safety of the motor carrier industry in North Carolina;

B. To determine the extent to which these laws, policies, and procedures are consistent with those in other states;

C. To work cooperatively with the National Governors' Association, the Federal Highway Administration, North Carolina Board of Transportation, and other organizations in an effort to streamline and improve uniformity and efficiency among the states in motor carrier taxation regulation, and other related matters; and

D. To advise the Governor and make recommendations concerning the motor carrier industry.

### Section 4. Administration.

DOT shall provide the planning, technical, and administrative support for the Advisory Committee.

### Section 5. Expenses.

Members of the Committee shall be compensated for their per diem expenses as provided in N.C.G.S. 138-5 and 138-6. These expenses shall be provided from funds made available from DOT.



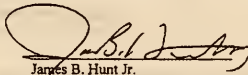
Section 6. Agency Cooperation.

Every agency and department of state government is directed to cooperate with the Committee by providing necessary information requested by the Committee and to provide the Committee on a timely basis departmental directives and procedures applied within the agency or department which affect the motor carrier industry.

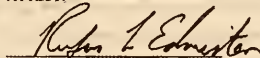
This Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 3rd day of April, 1995.



  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER NO. 77 TRANSIT 2001 COMMISSION

WHEREAS, Transportation 2001 is a comprehensive plan that was developed to provide the safest, most efficient and unified transportation system possible for North Carolina; and

WHEREAS, public transportation provides mobility alternatives that promote a positive quality of life, enhancing employment, education, recreation, cultural and social opportunities in urban and rural areas; and

WHEREAS, public transportation provides economic and environmental benefits; and

WHEREAS, public transportation needs are extending beyond municipal boundaries, creating the need for regional cooperation; and

WHEREAS, the roles and responsibilities of local and state governments in the provision of public transportation services need to be examined; and

WHEREAS, public transit strategies can help mitigate the growth in urban congestion, reducing pressure on urban highways; and

WHEREAS, the North Carolina Department of Transportation is committed to working with local governments to assist in providing efficient and effective public transportation services that are successful, productive and well utilized.

NOW, THEREFORE, by the authority vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment.

The Transit 2001 Commission is hereby established to assist the Department of Transportation in developing a master plan for public transportation. All members shall be appointed by the Governor and shall serve at his pleasure. Vacancies shall be filled by the Governor.

Section 2. Technical Committee.

A Transit 2001 Technical Committee shall be created to provide input to the Transit 2001 Commission. All members shall be appointed by the Secretary of the North Carolina Department of Transportation and serve at his pleasure.

Section 3. Master Plan.

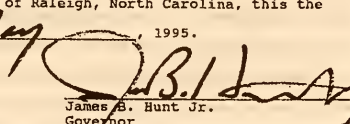
No later than fifteen months from the issuance of this Executive Order, the North Carolina Department of Transportation and the Transit 2001 Commission shall recommend to the Governor a master plan for public transportation.

This Executive Order shall be effective immediately and shall remain in effect until the Commission submits the master plan to the Governor.

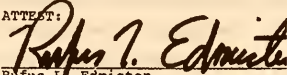
Done in the Capital City of Raleigh, North Carolina, this the

2nd day of May, 1995.



  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER NO. 78 NORTH CAROLINA HUMAN SERVICE TRANSPORTATION COUNCIL

WHEREAS, the North Carolina Human Service Transportation Council was established in 1991 to address problems, concerns, and opportunities regarding the provision of human service transportation and to make policy recommendations to the North Carolina Department of Transportation; and

WHEREAS, the North Carolina Human Service Transportation Council has led to increased cooperation among member agencies and increased coordination of local human service transportation; and

WHEREAS, the North Carolina Human Service Transportation Council has undertaken studies to facilitate the further coordination of human service transportation; and

WHEREAS, the North Carolina Department of Transportation (DOT), Department of Human Resources (DHR), Department of Environment, Health, and Natural Resources (DEHNR) and Department of Commerce (DOC) administer State and federal funding programs which may be used by local human service agencies to provide necessary client transportation services; and

WHEREAS, the General Assembly has appropriated funds for the Elderly and Disabled Transportation Assistance Program based on

the assurance of cost-effectiveness provided by implementation of the local Transportation Development Plan; and

WHEREAS, all human service transportation funds are to be expended in a manner consistent with the local Transportation Development Plan; and

WHEREAS, there is the need for the continued statement of policy on coordination of transportation resources and these state departments and agencies are in a position to facilitate the more efficient use of these resources.

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment.

The North Carolina Human Service Transportation Council ("Council") is hereby established.

Section 2. Policy.

A. Wherever practical, existing transportation resources, public and private, shall be utilized before any new resources shall be made available through public funds.

B. The locally prepared and adopted Transportation Development Plan shall continue to be the means through which determination of the most cost effective and efficient use of transportation resources is made.

C. To the extent that funds are available and equipment is used consistent with the local Transportation Development Plan, DOT shall provide capital equipment for the provision of local human service transportation while the transportation funds from other departments are used primarily for operating assistance.



D. The State departments should cooperate in the formation of, follow the policies, procedures and decisions of, and support the Human Service Transportation Council as described herein. Council representatives shall assist the Department of Transportation in encouraging local agencies to participate in transportation development planning efforts and in subsequent plan implementation, and to operate vehicles in a manner consistent with the local plan.

Section 3. Membership.

(a) The Council shall be composed of representatives from the Department of Administration, DOT, DHR, DEHNR and DOC. The Secretaries of the respective departments shall determine those divisions to be represented on the Council and shall appoint members in consultation with division directors. Representation shall include all divisions which administer federal and state funds used to provide human service transportation at the local level. Council appointees should be in policy-making positions and have authority over subrecipient budget review and approval.

(b) Departments, agencies or programs which are outside the jurisdiction of the Executive Order are encouraged to join the Council and agree to adopt the policies, procedures and decisions of the Council.

(c) The Deputy Secretary for Transit, Rail and Aviation of the DOT shall chair the Council.

Section 4. Duties of Council.

The Council shall have the following duties:

(a) To implement human service transportation policy and apply criteria as developed by the Council;

(b) To undertake studies to enhance the coordination and delivery of human service transportation services;

(c) To advise and make recommendations to the DOT and other state agencies concerning human service transportation policy.

Section 5. Administration.

The DOT Public Transportation Division shall provide the administrative support for the Council. Members serve without compensation or expense reimbursement.

Section 6. Effect on Other Executive Orders.


Executive Order No. 150 of the Martin Administration is hereby rescinded. The Council created herein shall be the successor to that North Carolina Human Service Transportation Council.

This order shall be effective immediately.

Done in the City of Raleigh this the 23rd day of

May, 1995.



  
James B. Hunt Jr.  
Governor

ATTEST  
  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER NO. 79 RESCINDING THE CENTER FOR THE PREVENTION OF SCHOOL VIOLENCE

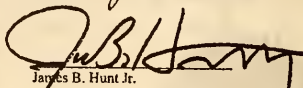
By the power vested in me as Governor by the Constitution and laws of North Carolina,  
IT IS ORDERED:

Executive Order No. 19, signed June 30, 1993, is hereby rescinded. The Center for the  
Prevention of School Violence created by that Order is hereby transferred to the Board of  
Governors of the University of North Carolina.

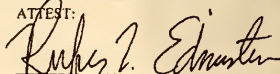
This Order is effective immediately.

Done in Raleigh, North Carolina, this the 7th day of June, 1995.



  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER NO. 80 AMENDING THE NORTH CAROLINA ALLIANCE FOR COMPETITIVE TECHNOLOGIES (NCACTS)

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 5 of Executive Order 63 is hereby amended to read:

### Section 5. Board of Directors.

A. The Alliance shall have a Board of Directors of 22 persons appointed by the Governor from among the public and private sectors with a majority of members being from the private sector. The Speaker of the North Carolina House of Representatives and the President Pro Tempore of the North Carolina Senate are requested to nominate two members each, one of each party, to serve terms concurrent with their terms of office. The Governor shall appoint their nominees. Six directors shall be appointed from educational institutions, government, and non-profit institutions. Twelve directors shall be appointed from private sector industry and technology fields, including but not limited to, pharmaceuticals and chemicals, environmental resources, food processing, furniture, information technologies, metals, paper, polymers, textiles, transportation and wood products. All initial directors, except the Chair and legislative directors, shall serve a one-year term and until their successors are appointed. Thereafter, terms shall be staggered. One third of the directors shall have one-year terms; one third, two-year terms; and one third, three-year terms. Directors appointed or reappointed thereafter shall serve three-year terms.

B. The Governor shall appoint the Chair of the Board of Directors to serve an initial three-year term.

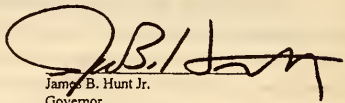
C. Responsibilities of the Board of Directors shall be advisory in nature to the Governor and the General Assembly. Their duties shall include:

1. Approval of policies, regulations, and by-laws that are necessary to form and operate the organization;
2. Oversight of the policies and plans of the Alliance, including the strategic plan, studies of needs, gaps in service delivery, and performance standards;
3. Implementation of procedures to insure cooperation with other parts of State government;
4. Adoption of a proposal for staffing the Alliance;
5. Approval of an operating plan for the Alliance; and
6. Identification of other activities and priorities that should be undertaken by the Alliance.

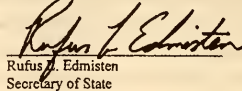
This Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 13<sup>th</sup> day of June, 1995.



  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State



# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER NO. 81 CREATION OF THE FAMILY SUPPORT TRUST FUND

WHEREAS, it is recognized that the State of North Carolina, for the protection and nurturing of its children, must foster the development and support of its families; and

WHEREAS, it is the responsibility of the State, local governments, non-profit organizations, businesses, and private citizens to work together to promote this development and support; and

WHEREAS, the Department of Human Resources is responsible for encouraging the development of a comprehensive statewide system of family resource services to support family well-being and prevent child abuse and neglect; and

WHEREAS, the State must have the ability to combine public and private resources together in one fund and invest and expend those funds to promote the development of a statewide system of family resource services;

NOW, THEREFORE, by the authority vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

### Section 1. Establishment.

The North Carolina Family Support Trust Fund is hereby established within the Department of Human Resources. The Trust Fund is established to serve as a pool in which state, federal, and private funds may be combined, invested, and disbursed specifically for the purposes of promoting and developing a broad range of child abuse and neglect prevention activities and family resource programs. The assets of the Trust Fund may be used for purposes that include the following:

- A. Establishing and expanding statewide networks of community-based family resource programs;
- B. Promoting child abuse and neglect prevention activities;
- C. Integrating child and family services funding streams in order to provide flexible funding for the development of community-based family resource programs;
- D. Establishing or expanding community-based collaboration to foster the development of a continuum of preventive services for children and families, which are family-centered and culturally competent;
- E. Encouraging public and private partnerships in the establishment and expansion of family resource programs; and
- F. Increasing and promoting interagency coordination among state and local agencies in the establishment and expansion of family resource programs.

The Trust Fund shall be administered at the direction of an interdisciplinary advisory board as specified in this Order.

Section 2. Interdisciplinary Advisory Board.

The Family Support Trust Fund shall be administered by the Interdisciplinary Advisory Board, which shall include representatives from communities and representatives from existing health, mental health, education, vocational rehabilitation, employment and training, child welfare, and other agencies within the State. The Secretary of the Department of Human Resources is directed to either:

- A. Direct the Advisory Committee on Family Centered Services, under the leadership of the Chairperson chosen under the rules governing the Committee and with the incorporation of additional representatives from existing vocational rehabilitation and employment and training agencies, to serve as the Interdisciplinary Advisory Board for the Family Support Trust Fund; or

- B. Establish a new Interdisciplinary Advisory Board, hereby referred to as the Family Support Trust Fund Interdisciplinary Advisory Board. The new Interdisciplinary Advisory Board shall be established in accord with the following guidelines:
1. The Board shall be composed of twelve representatives from communities and from existing health, mental health, education, vocational rehabilitation, employment and training, child welfare, state education agency and other agencies within the state and appointed by the Secretary of the North Carolina Department of Human Resources;
  2. The Chairperson of the Board shall be designated by the Secretary of the North Carolina Department of Human Resources for a one-year, renewable term; and
  3. Board members shall serve three year staggered terms.

Section 3. Functions of the Interdisciplinary Advisory Board.

The Interdisciplinary Advisory Board shall meet on an as needed basis at the call of the Chairperson. The responsibilities of the Interdisciplinary Advisory Board shall include those listed below:

- A. Assess issues critical to the prevention of child abuse and neglect and the development of a statewide system of family resource programs.
- B. Receive gifts, bequests, and devises for deposit and investment into the Family Support Trust Fund;
- C. Solicit proposals for programs which shall provide a broad range of child abuse and neglect prevention activities and family resource programs;
- D. Establish criteria for the awarding of grants which shall include and emphasize the public-private partnership concept;
- E. Fund programs that effectively provide a broad range of child abuse and neglect prevention activities and family resource programs; and

- F. Present a report to the Governor and the Secretary of the Department of Human Resources at the end of each state fiscal year.

Section 4. Administration.

- A. The Department of Human Resources shall provide staff support as needed to support the activities of the Family Support Trust Fund and the Interdisciplinary Advisory Board.
- B. Subject to the availability of funds, members of the Interdisciplinary Advisory Board may be reimbursed for travel and subsistence expenses as authorized by state statute. State Employees must be reimbursed by state appropriated funds.
- C. All funds administered by the Interdisciplinary Advisory Board shall be subject to audit by the State Auditor.

Section 5. Implementation and Duration.

- A. This order shall be effective immediately.
- B. The Family Support Trust Fund shall be dissolved at the pleasure of the Governor. In the event of dissolution, the assets remaining in the fund will be turned over to one or more organizations described in Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1954 or corresponding sections of any prior or future law, or to the federal, state, or local government for expenditure solely for the purposes stated in this Order and at the discretion of the Governor of the State of North Carolina.

Done in Raleigh, this the 27th day of June, 1995.



James B. Hunt, Jr.  
Governor

ATTEST:

Rufus L. Edmisten  
Rufus L. Edmisten

# State of North Carolina



JAMES B. HUNT JR.  
GOVERNOR

## EXECUTIVE ORDER NO. 82 PERSIAN GULF WAR MEMORIAL COMMISSION

WHEREAS, the purposes of the Commission established by Executive Order No. 33 have been fulfilled; and

WHEREAS, a new Commission is needed to establish memorials to the fighting men and women of North Carolina who served admirably in the Persian Gulf War;

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

### Section 1. Establishment and Membership.

There is hereby established the Persian Gulf War Memorial Commission whose membership shall consist of:

- A. Two (2) persons appointed by the Governor upon the recommendation of the Speaker of the House of Representatives;
- B. Two (2) persons appointed by the Governor upon the recommendation of the President Pro Tempore of the Senate;
- C. Five (5) persons appointed by the Governor including one representative of the N. C. Desert Storm Memorial Foundation; and
- D. One (1) representative of the Department of Cultural Resources, one (1) representative of the Division of Veterans Affairs of the Department of Administration, and one (1) representative of the State Capitol Planning Commission appointed by the Governor as non-voting ex-officio members.

The members of the Commission shall serve for the life of the Commission. From among the membership, the Governor shall appoint the Chair. The Commission shall meet at



the call of the Chair. Procedures involving the existence of a quorum and the filling of vacant seats shall be governed by N.C.G.S. 143B-133. No person shall be appointed to the Commission if he or she currently holds a state-level elected office or is a member of the Governor's cabinet.

Section 2. Purpose.

The purpose of the Commission is to create a proposal for construction of a Persian Gulf War Memorial, including the areas of site selection, design, and funding. The Chair shall periodically advise the Governor as to the progress of the Commission.

Section 3. Administration.

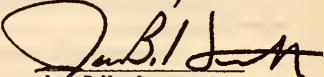
Administrative support for the Commission shall be provided by the Department of Administration. There shall be no per diem paid to members of the Commission; however, necessary travel and subsistence allowance may be paid in accordance with state law.

Section 4. Rescission.

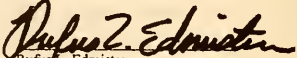
Executive Order No. 33 (Persian Gulf War Commission) dated November 10, 1993, is hereby rescinded. This is the successor organization to that Commission. All of the Commission's files, records, etc., shall be transferred to the Commission created herein.

This Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 27th day of July, 1995.

  
James B. Hunt Jr.  
Governor

ATTEST:

  
Rufus L. Edmisten  
Secretary of State



# NUMERICAL INDEX TO SENATE AND HOUSE BILLS

## 1995 GENERAL ASSEMBLY REGULAR SESSION 1995

Ratified Number refers to the Session Law Chapter number except when preceded by an R, in which case it refers to the Resolution number

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52	529	167	24	294	605
53	545	178	90	295	111
54	20	180	463	300	310
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63	8	200	516	309	158
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348	227	502	535	653	405
349	263	505	264	654	113
353	193	506	123	661	337
357	402	507	687	662	657
359	712	515	R12	663	432
362	103	519	265	664	325
364	530	525	418	668	447
365	36	528	500	679	266
375	595	530	374	681	380
377	92	534	726	682	313
379	328	535	104	684	689
384	159	538	R7	685	338
388	445	540	698	686	267
396	395	541	411	687	585
399	248	542	132	689	433
402	527	543	306	691	492
404	446	554	256	693	510
405	141	555	584	694	345
407	465	556	143	699	203
408	237	558	419	701	371
412	387	559	520	704	365
413	142	560	214	706	368
414	322	563	364	707	161
415	479	568	307	708	273
416	255	570	442	709	690
423	403	575	180	710	533
426	388	579	201	712	537
427	212	580	655	714	282
428	160	582	144	717	215
430	417	583	112	724	331
437	367	585	257	725	597
448	98	590	509	742	498
449	228	597	375	751	406
453	435	598	656	752	434
458	531	600	596	754	480
459	503	606	458	755	229
470	714	612	242	764	181
471	93	616	258	771	99
476	128	630	469	772	145
477	213	632	311	775	249
478	396	636	105	776	481
481	200	637	343	783	528
482	129	639	106	792	448
483	194	640	107	798	422
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832	204	1003	250	1239	649
833	715	1012	377	1243	559
836	424	1014	606	1244	692
838	650	1017	94	1245	565
843	550	1021	359	1246	564
855	713	1041	184	1263	754
858	369	1042	295	1267	566
859	739	1046	131	1270	652
862	100	1049	491	1280	599
864	449	1055	459	1286	653
865	487	1080	420	1294	756
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873	546	1094	645	1317	648
874	504	1096	R10	1328	743
878	644	1102	R14	1360	600
884	146	1113	598	1365	640
886	205	1116	561	1375	661
890	182	1139	716	1377	685
896	407	1146	752	1378	641
899	408	1148	740	1380	757
901	490	1150	658	1385	642
908	511	1151	659	1386	755
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927	502	1169	562	1394	R17
929	389	1173	662	1397	643
931	471	1174	651	1409	601
943	390	1176	574	1411	686
945	R8	1178	646	1412	581
955	425	1179	691	1484	R16
966	541	1181	573	1485	R21
967	269	1183	753	1486	R22
973	505	1190	580	1487	588
974	544	1198	647	1489	R20
975	239	1201	699	1490	R23
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9	719	205	19	341	270
33	22	206	48	343	55
47	114	207	632	345	37
55	477	208	251	350	277
63	376	211	35	353	506
65	455	212	54	357	233
67	2	213	109	360	451
68	162	214	73	361	575
69	133	218	526	366	216
70	1	222	440	372	38
71	49	223	474	373	110
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80	7	227	297	375	81
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85	397	229	324	378	298
90	398	230	507	381	82
91	R2	231	333	383	101
97	115	233	589	386	299
103	43	235	116	390	452
108	326	239	363	396	495
115	45	248	61	400	137
120	473	265	275	401	40
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122	50	270	319	409	186
123	340	272	240	416	330
127	308	273	245	420	149
128	75	280	475	423	166
131	3	281	476	424	217
133	134	301	136	428	315
134	163	305	437	437	346
135	195	311	436	443	482
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137	52	313	30	447	413
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481	462	602	119	750	97
487	334	603	198	751	127
490	539	604	59	754	207
491	301	606	153	756	280
492	125	609	69	758	155
493	56	611	70	759	472
496	352	615	189	761	427
498	170	618	219	762	353
501	R5	627	87	766	241
504	410	628	71	767	289
505	341	632	96	768	349
507	196	634	206	770	354
508	76	637	522	773	63
513	171	638	154	774	382
515	234	639	335	779	720
517	150	642	260	783	372
519	83	643	187	787	223
520	126	645	366	788	177
526	218	647	220	792	271
527	051	651	84	798	321
529	57	656	323	799	208
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536	172	662	77	807	453
537	399	663	279	812	210
540	590	666	120	826	414
543	95	667	381	829	188
545	513	676	303	831	305
546	197	679	78	832	392
550	489	680	139	834	534
552	347	682	339	835	508
553	58	686	591	836	484
555	499	690	304	837	156
556	412	692	261	844	428
558	230	694	441	846	355
566	235	696	221	848	336
572	65	697	175	849	224
574	348	698	79	851	290
575	302	706	540	859	594
576	426	708	327	873	478
578	151	713	176	879	727
583	173	718	456	895	415
584	174	729	514	897	488
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955	731	1156	614	1286	704
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970	383	1158	553	1301	745
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1074	547	1185	570	1371	611
1075	586	1187	723	1372	629
1077	633	1189	556	1376	630
1078	551	1190	557	1383	708
1080	627	1192	579	1384	621
1081	567	1193	582	1385	622
1083	746	1199	730	1388	678
1086	729	1200	592	1394	737
1088	548	1201	668	1395	636
1089	552	1202	669	1397	709
1090	555	1203	734	1401	684
1094	696	1205	702	1413	750
1096	747	1207	609	1414	623
1097	671	1208	724	1417	738
1098	732	1209	616	1419	624
1100	631	1210	679	1421	672
1102	666	1211	735	1424	710
1112	576	1212	680	1451	R27
1116	700	1215	617	1453	R28
1119	560	1219	618	1458	751
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1125	717	1230	558		
1130	577	1231	681		
1131	612	1233	587		
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